PROPERTY RIGHTS IN COURT: WIN SOME, LOSE SOME — PAGES 10-11

Hollywood Hypocrites Surface in Malibu PAGE 12

Environment&Climate News

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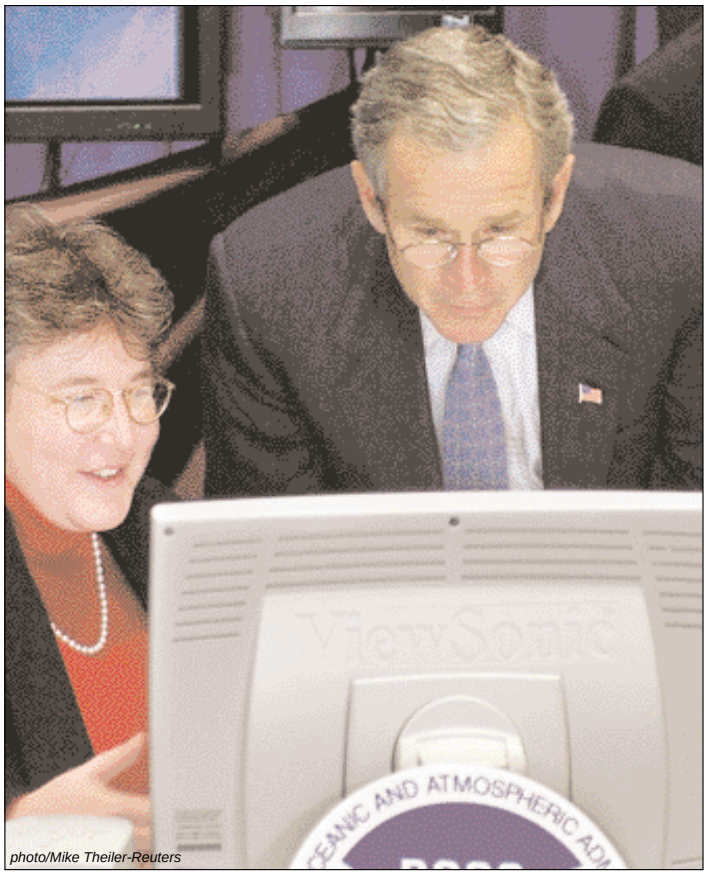
Bush rejects EPA warming report



photo/Mike Theiler-Reuters

U.S. President George W. Bush looks at National Weather Service satellite coverage with Barbara McNaught at the National Oceanic and Atmospheric Administration in Silver Spring, Maryland. Bush, who rejected the 1997 Kyoto treaty as undermining the U.S. economy, said his plan will encourage companies and individuals to limit greenhouse emissions, and economic growth will lead to progress in reducing pollution.

BY JAMES M. TAYLOR

The Environmental Protection Agency released in June a report on global climate change that contradicts public statements on the subject made by President George W. Bush. The agency's report claims to have found evidence that human activity is having a significant warming effect on the global climate.

The new position was staked out, with no fanfare or public statement, in a document titled *Climate Action Report 2002*, directed to the United Nations. The President distanced himself from the report after he came under heavy fire for his apparent flip-flop on the issue.

"I read the report put out by the bureaucracy," Bush told reporters on June 4. "The Kyoto treaty would severely damage the United States's economy, and I don't accept that." Presidential spokesman Ari Fleischer assured reporters the President still believes there is "considerable uncertainty" regarding the causes of global warming.

EPA at odds with Senate

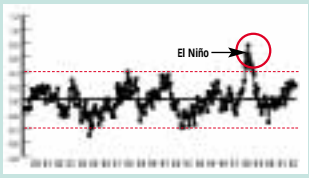
The new EPA report is at odds with the U.S. Senate, which opted to reject the Kyoto Protocol in 1997 by a unanimous 95-0 vote. With the science of global warming uncertain and the U.S. destined to bear the brunt of future restrictions on energy use and greenhouse gas emissions, the Senate demanded significant changes in the Protocol before it would consider ratification. Most notably, the Senate objected to the Protocol's:

- failure to give nations credit for emissions-capturing forests and other carbon "sinks;"
- refusal to allow nations to trade emissions credits;
- designation of 1990 as the base year for emis-

WARMING continued on page 4

Is *this* global warming?

GLOBAL TEMPERATURES



Each month, Earth Track updates the global averaged monthly satellite measurements of the Earth's temperature. *See page 3*

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Liberal academic shoots down the Precautionary Principle

BY JAMES M. TAYLOR

The Precautionary Principle—a popular theory holding that speculative, unproven environmental risks are entitled to primacy in any environmental debate so long as any risks exist—has been harshly criticized in a just-released law and economics paper.

While a thoughtful analysis finding fatal flaws in the Precautionary Principle is neither a new development nor unique, what makes "Beyond the Precautionary Principle" noteworthy is its author: University of Chicago law professor and

PRECAUTIONARY continued on page 16

Pesticide bans put children at risk from roaches, rodents

BY JAMES M. TAYLOR

In the first phase of a carefully scripted campaign to ban the use of pesticides in the United States, liberal environmental activist groups have taken aim at a population they usually claim to defend: children.

Making no secret of their ultimate goal of using more "natural" means—such as a dramatically increased spider population—to control nuisance and disease-carrying insects, the anti-chemical groups are targeting schools and parks in their efforts to ban pesticides entirely.

The U.S. Senate in June 2001 approved a measure, added as an amendment to last year's education bill, that would have required

PESTICIDES continued on page 14

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Canadian indecision may doom Kyoto Protocol

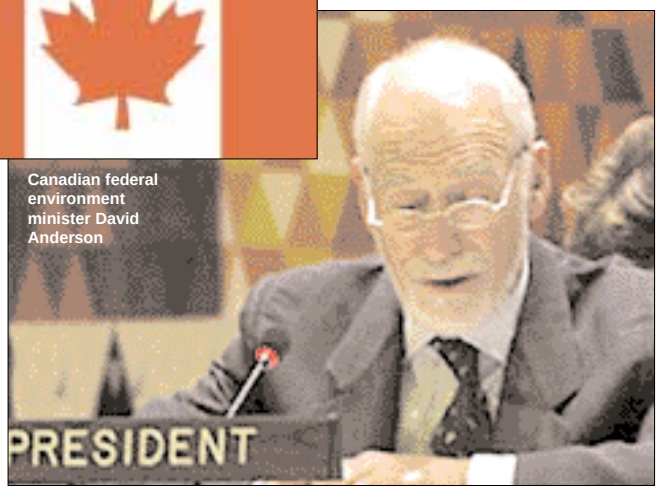
BY DAVID E. WOJICK

Canada's drawn-out deliberation over whether to ratify the Kyoto Protocol is threatening to upset a carefully crafted, global environmentalist agenda.

The Canadian federal government's decision to conduct Kyoto consultations through the rest of this year makes it extremely unlikely the protocol will go into effect as an international legal instrument during the Rio+10 summit in Johannesburg, South Africa, in late August. This failure will be a resounding setback for the global environmentalist movement, which is used to getting its way.

The Rio+10 summit—the World Summit on Sustainable Development (WSSD)—is supposed to set the work plan for the next decade of international environmental activism. Kyoto is by far the biggest action item on the agenda, since it puts control of energy use into the hands of anti-fossil fuel environmentalists.

As with everything in the climate change game, the Kyoto details are tricky and complex. In order to go into binding legal effect, the protocol requires that most, but not all, of the richest countries ratify it.



Canadian federal environment minister David Anderson

Kyoto: A numbers game

The protocol includes a list of the 34 most industrially developed countries, including Canada, of course, and their estimated 1990 emissions of greenhouse gases. Countries accounting for 55 percent of the listed total must ratify before the protocol becomes binding. This has become the critical numbers game.

The United States is by far the biggest greenhouse gas (GHG) emitting country on the list, with 36.1 percent of the total. But the U.S. has dropped out on economic grounds, which means nearly every country left on the list must ratify before the protocol can go into effect. The swing margin is just 8.9 percent.

Australia, with 2.1 percent, has said it will not ratify without the U.S., bringing the margin to 6.8 percent. Canada has 3.3 percent, the loss of which would take the margin to 3.5 percent. If another large country, or a handful of small ones, do not ratify, the protocol cannot come into force.

On June 4, the Japanese cabinet approved documents to ratify the Kyoto accord, after the upper house of parliament voted 229-0 in favor of it on May 31. Also on May 31, the 15 countries of the European Union voted to ratify, bringing the total number of countries ratifying the treaty to 73. Those countries, however, represent just 36 percent of the estimated 1990 greenhouse gas emissions—short of the 55 percent level required for the protocol to go into effect.

To date almost no one else has ratified, and time is rapidly running out as far as Johannesburg is concerned. Canada's decision to be thoughtful is likely to give some other countries pause.

Concessions to Canada may be key

Canada's action is particularly galling to Canadian federal environment minister David Anderson, chairman of the governing council of the United Nations Environment Program, which owns the Kyoto Protocol. He is also a leading advocate of "global environmental governance," a movement to create a green alternative to the World Trade Organization. The Kyoto Protocol is the flagship of the global environmental governance scheme, but Anderson has failed to deliver his own country.

> **"... Canada is in no position to meet the Kyoto no-growth targets, for which there is no scientific basis anyway, and should reject the protocol."**

Even worse, Canada is demanding new concessions, especially credit for clean natural gas exported to the United States. Canada supplies almost 20 percent of the gas used by the U.S., and that figure is projected to rise rapidly. The U.S. is building a huge fleet of gas-fired electric power plants, many of which will depend on Canadian gas, so this is not a trivial issue. Canada stands to make many billions of dollars through its natural gas deals with the U.S.

To his great credit, Anderson has defended Canada's actions to the global green community. When he presented the gas export credit concept to the European Union in Banff he stood firm, despite the EU's disbelief. Prime Minister Jean Chretien is backing him up.

This concession message is not likely to be lost on other countries when Kyoto negotiations reopen in October, and every country counts. So it remains to be seen whether the Canadian position is merely a temporary setback for the Kyoto Protocol, or the beginning of the end.

Unlike Canada, none of the other industrialized countries is openly discussing the issue. The United States—which, like Canada, is still growing economically—has recognized the absurdity of the Kyoto energy reduction targets and walked away. The European Union is so stagnant economically that Kyoto is not a problem. The former Soviet Union countries, thanks to their economic collapse, are hoping to sell billions of dollars worth of Kyoto credits to Canada and Japan.

The deep message is that Canada is in no position to meet the Kyoto no-growth targets, for which there is no scientific basis anyway, and should reject the protocol. Canada's open consultation process may actually bring this truth out. But in the meantime, Johannesburg is probably a bust. Global environmental governance will just have to wait.

David E. Wojick, a journalist and policy analyst who resides in Virginia and Ontario, helped found the Department of Engineering and Public Policy at Carnegie Mellon University. He can be reached by email at dwojick@climatechangedebate.org

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Island nation may sue U.S. over global warming

But scientists say sea level rising only 5 cm per century

BY S. FRED SINGER

Tuvalu is threatening to sue the United States and Australia over their refusal to back the Kyoto Protocol, which sets targets aimed at cutting greenhouse emissions blamed for global warming and rising sea levels.

While not expecting to win what would be lengthy and expensive legal cases, observers say Tuvalu would at least draw global attention to its plight.

"The Pacific Island of Tuvalu has criticized Australia's position on global warming for favoring the United States at the expense of its neighbors," Tuvalu's Prime Minister, Koloa Talake, said. He is considering international legal action against major Australian companies whose emissions contributed to global warming and rising sea levels.

"[The Pacific island of] Tuvalu is threatening to sue the United States and Australia over their refusal to back the Kyoto Protocol, which sets targets aimed at cutting greenhouse emissions blamed for global warming and rising sea levels."

Pacific states are seeking ways to blackmail rich polluting nations and multinational concerns whose emissions of greenhouse gases they say are wiping them out. Tuvalu, a string of nine coral atolls five meters (16 feet) above sea level at their highest point, fears its last palm tree could sink beneath the Pacific within 50 years. Other threatened Pacific islands include Kiribati, Niue, the Marshall Islands, and the Maldives in the Indian Ocean.

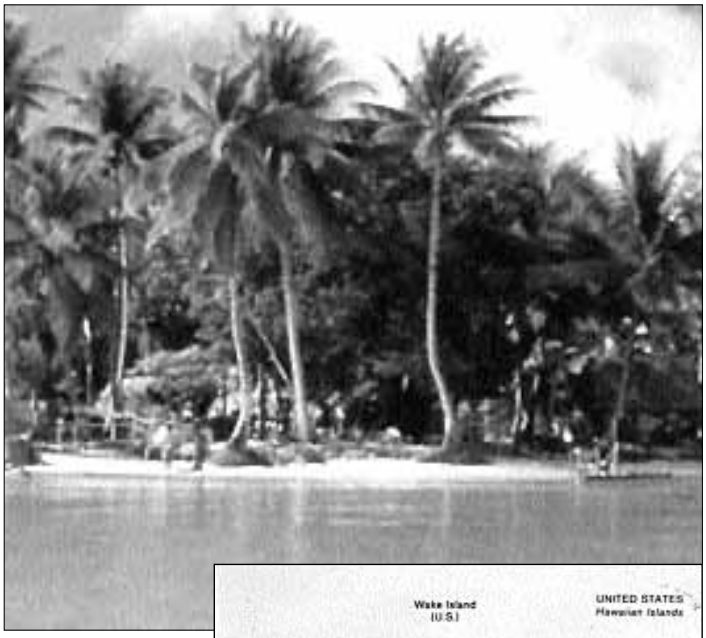
Bob Foster writes us from Adelaide: "Such an action by the Tuvalu authorities would be the best that could happen, since then the scientific foundation of the 'greenhouse effect' would be tested in court and independent scientists would be heard as experts. Provided we could be sure the action would be brought in the U.S. or Australia, and not The Hague, we skeptics might consider launching the 'Save Tuvalu' campaign."

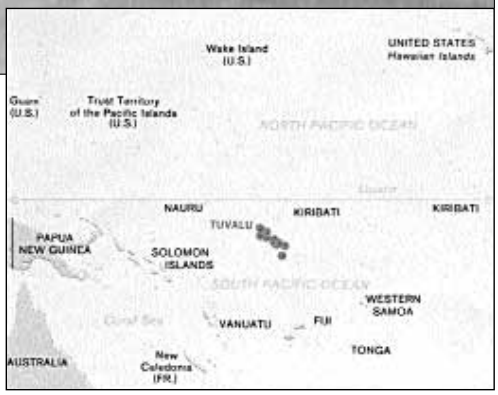
Tuvalu and other Pacific nations were looking at taking legal action in the International Court of Justice. A case against Australia was possible, but action against Australian companies was more likely, Talake said. "These industries are in industrialized countries, they are the cause of global warming, and they are the ones we would like to take to court. Companies likely to face action would be the biggest gas emitters, such as major oil companies," he said.

Talake also announced a partnership with Ecos Corporation, headed by former Greenpeace chief Paul Gilding, to develop a model for a sustainable and renewable energy system for Tuvalu, likely to be based on solar or wave power.

Australia's National Tidal Facility (NTF), based at Flinders University in Adelaide, has installed and maintained eight sophisticated tide gauges at South Pacific sites, including Tuvalu. Since the instrumentation was installed in 1993, average sea level increase at Tuvalu has been 0.5 mm/yr, being a rate of 5 cm per century.

A similar analysis of 27 data-sets for the Pacific (longest record, 92 years at Honolulu) yields a rise of 8 cm per century. Crucially, "... visually at least, and at this stage, there is no clear evidence for an acceleration in sea level trends over the course of the last century."





Why then is Talake so upset? He could be concerned that the Summary for Policymakers of IPCC's new Third Assessment Report states that:

"Tide-gauge data show that global-averaged sea level rose between 0.1 and 0.2 meters (i.e. 10 and 20 cm) during the 20th century." But "Within present uncertainties, observations and models are both consistent with a lack of significant acceleration of sea level rise during the 20th century." And continues, implausibly: "Global mean sea level is projected to rise by 0.09 to 0.88 meters between 1990 and 2100."

Even this dubious prediction should pose no problem for a coral atoll. After all, the sea has risen some 130 meters over the past 20,000 years, and atolls have maintained their station—at just above sea level.

Coral grows, if you let it. Storms break it off, and throw it up above the reach of normal tides. Islands like Tuvalu are self-maintaining—provided you don't interfere. But if you gather up the coral debris for use in construction work; if you pave parts of the highly permeable island surface and allow fresh water from rainfall to run into the sea instead of soak into the ground; and if you build flush toilets and discharge the effluent into the sea, then your island is doomed.

"It is likely that Mr. Talake's problem is real enough. He calls it greenhouse. I would call it over-population," writes Foster.

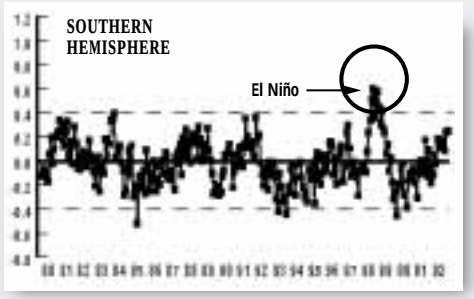
EARTH TRACK

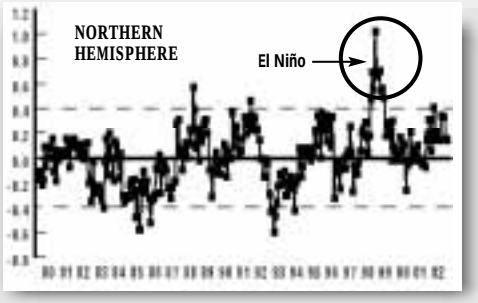
MAY 2002

The global average temperature for May, shown on page 1, was 0.197˚C above normal. The Southern Hemisphere's temperature departure, shown below, was 0.25˚C above normal; the Northern Hemisphere's, below right, was 0.14˚C above normal.

Each month, Earth Track *updates the global averaged monthly satellite measurements of the Earth's temperature. These numbers are important because they are real—not projections, forecasts, or guesses.*

Global satellite measurements are made from a series of orbiting platforms that sense the average temperature in various atmospheric layers. Here, we present the lowest level, which climate models say should be warming. The satellite measurements are considered accurate to within 0.01°C.





The data used to create these graphs can be found on the Internet at *http://vortex.nsstc.uah.edu/data/msu/t2lt/t2ltglhmam.d.*

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WARMING continued from page 1

sions calculations;
- failure to apply to China, India, or other leading greenhouse gas emitters; and
- strict and legally binding enforcement provisions.

In March 2001, Bush notified Kyoto delegates the U.S. was withdrawing from the Protocol based on the above concerns, as well as concerns regarding the uncertain scientific case for global warming and the Protocol's potentially devastating effects on the U.S. economy. Bush pledged the U.S. would undertake further research into global warming issues and work to reduce greenhouse gas emissions under a more flexible and economically rational framework.

As recently as February 2002, when the Bush administration announced a series of voluntary programs to reduce U.S. greenhouse gas emissions, the President publicly stood by the view, shared by many prominent atmospheric scientists, that science has failed to discover a link between human activity and global temperatures.

"In the *Climate Action Report* ... [the Bush] administration paints a daunting panorama of environmental harms that will result from human-induced global warming."

In the *Climate Action Report*, however, EPA paints a daunting panorama of environmental harms that will result from human-induced global warming. Temperatures rise between 5 and 9 degrees Fahrenheit in the twenty-first century. Sea levels rise, consuming coral reefs, barrier islands, and coastal wetlands. Water supplies dry up, as there is less snowpack to melt each spring. Rocky Mountain meadows disappear. Forest regions see wholesale shifts in species population and growth patterns. Droughts consistently afflict the western U.S. Tropical storms gain ferocity and inflict great flooding catastrophes on the East Coast.

Experts criticize report

Patrick Michaels, professor of environmental sciences at the University of Virginia, observed that the Bush report's regional analysis on the future effects of global warming was taken from a faulty assessment previously put forward by the Clinton administration. The regional assessment, according to Michaels, "was based on two climate models that performed worse than a table of random numbers when applied to U.S. temperatures over the past 100 years."

Instead of fictitious horror stories about disappearing Rocky Mountain meadows, the actual result of a carbon dioxide-enhanced world this past century has been highly desirable, Michaels points out. "Over the last century, life span has doubled and crop yields have quintupled. We've had unprecedented democratization of wealth. So how important is this issue really?"

"Here are the scientific facts," added Sallie Baliunas, deputy director of Mount Wilson Observatory and an astrophysicist for the Harvard-Smithsonian Center for Astrophysics. "The key layers of air, from one to five miles high, show no human-made global warming trend. Global warming at the surface is largely, if not entirely, natural. Therefore Kyoto-like greenhouse gas emission cuts will not affect surface warming."

James K. Glassman, host of TechCentral Station, noted even global warming alarmists admit the Earth has warmed at most a mere 1 degree Fahrenheit over the past century. While the theory of global warming is uncertain, observed Glassman, the real-life costs of cutting greenhouse gas emissions are undeniable. Such costs could easily run more than $300 billion a year, he noted.

"Now, as a result of the new report, which was sent to the United Nations," stated Glassman, "the stage is set for an inevitable government-run program to cut carbon-dioxide emissions by cutting energy use. And cutting energy use means reducing the rate of economic growth. There is no other way.

"By accepting the basic premise of extreme environmentalists, the President will ultimately be forced to accept the major content of the same treaty that he rejected a little over a year ago as 'fatally flawed': the Kyoto Protocol, signed by then-Vice President Al Gore in 1997 but never ratified by the U.S. Senate, which instead rejected it by a 95-0 vote."

"Presidential spokesman Ari Fleischer assured reporters the President still believes there is 'considerable uncertainty' regarding the causes of global warming."

Greens also unhappy

As if taking their cue from Glassman, environmental activist groups criticized both the President's earlier delay in accepting their global warming theory and his continuing failure to adopt the full range of their command-and-control solutions.

According to Debbie Boger, a spokesperson for the Sierra Club, it is "irresponsible for the Bush administration to issue this report saying that global warming will have serious consequences and then turn around and refuse to find a solution to it."

"It's significant to see an official publication of the Bush administration recognize how serious the global warming problem is," added David Donniger, climate policy director for the Natural Resources Defense Council, "but I don't see any indication that the higher levels have absorbed what this means. ... The government's mouth speaks, and the ears don't hear."

"What the report is missing," Donniger continued, "is any commitment from the U.S. to change its path of ever-growing emissions. One always hopes they'll wake up and smell the carbon, but I don't see any sign of it."

Taking the base for granted?

While the President attempted to distance himself from the EPA report, many political analysts warned he may have irreversibly and unnecessarily alienated his political base.

"Bush's base is becoming demoralized," mused Glassman. "No, hard-core Republicans won't vote for a Democrat for President, but if Bush gives up on principles, they won't campaign hard for his re-election either.

"Will environmentalists be won over by the President's about-face on Kyoto? Hardly. In fact, after effectively silencing them with his strong stand, he has now energized them. Will voters on the fence be drawn to Bush now that he has flip-flopped on Kyoto? I doubt it. Bush's greatest asset was his self-confidence, his strong advocacy of principle, his almost ingenuous belief (like Reagan) in doing the right thing. By going wobbly, he impresses no one.

"He was better off running as an underdog. Back then all he knew was what he believed in. That's the kind of President Americans want."

"Whether it was sloppy language, a runaway EPA, or truly a change in position, you'd think the Administration would know better than to hand the green lobby such an easy target," concluded the *Wall Street Journal*. "EPA boss Christie Whitman sure has a knack for blindsiding her boss."

"While the President attempted to distance himself from the EPA report, many political analysts warned he may have irreversibly and unnecessarily alienated his political base."

Summarized conservative radio commentator Rush Limbaugh, "What's left of the conservative agenda that has not been offered up to Democrats? ... George W. Algore, anyone?"

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'Yes' on Yucca

BY DON WAINWRIGHT

Manufacturing accounts for roughly one-third of America's demand for electricity. As a small manufacturer who employs 200 men and women near St. Louis, I understand how important a reliable and affordable flow of power is to our economy—especially as we work our way out of recession.

I'm not a politician, but I also understand some of the political forces that have sought to delay the establishment of a nuclear waste repository at Yucca Mountain.

Importance of nuclear energy

Many people simply do not appreciate the critical role nuclear power has in providing electricity for the economy. A full 20 percent of America's current electricity supply is generated by nuclear power plants. Here in Missouri, 13 percent of our electricity comes from nuclear power. It is both an extremely efficient power source and one that emits no greenhouse gases.

With its use of nuclear energy last year, Missouri avoided approximately 54,000 tons of sulfur dioxide emissions, 22,000 tons of nitrogen oxide emissions, and 2.31 million tons of carbon emissions.

Though some may wish to deny it, the fact is that, for the foreseeable future, nuclear power will remain a vital part of any comprehensive domestic energy policy. We have all learned in recent months that allowing ourselves to be overly reliant on imported energy can pose a serious threat to our national and economic security. And electricity consumers are already paying twice to manage used nuclear fuel, once for the federal program and again for their utility companies to build temporary storage facilities at plant sites scattered throughout the country.

As long as we generate electricity with nuclear power, we will create nuclear spent fuel and other waste. And that waste must be stored safely and securely. Ultimately, we've got to ask ourselves whether our nuclear waste will be safer in one impregnable, Fort Knox-like facility or in more than 130 lesser facilities scattered across the country, as is now the case.

Time to proceed with Yucca Mountain site

Underground nuclear waste storage has been studied for more than 20 years. While there are still specific questions that need to be answered about Nevada's Yucca Mountain as a proposed site for such storage, manufacturers agree with President George W. Bush and Energy Secretary Spencer Abraham that those questions will be dealt with during the licensing process ... which should begin now.

The House of Representatives listened to the concerns of Nevada Gov. Kenny Guinn (R), who had exercised his right to veto the President's selection of the Yucca Mountain site. But it then voted overwhelmingly, in bipartisan fashion, to override the governor's veto, allowing the thoughtful approval process to move ahead. The Senate must now follow suit if further, needless delay is to be avoided.

The issues have been studied from every conceivable angle by the agencies with expertise and responsibility for making such complicated recommendations. They say the science is clear: Yucca Mountain is safe, secure, and suitable. And the licensing process that will play out over several years will afford the experts ample opportunity to resolve minor problems that may persist. So what are we waiting for?

Manufacturers and every business and household in America benefit when energy bills are manageable. Just as family budgeters sitting around the kitchen table rarely plan to buy a new car or washer-dryer if they know their electricity bill may double or triple by year's end, business planners are not likely to invest in new equipment and technologies, diversified product lines, worker training, or job creation when faced with unpredictable energy costs. If we choose to jeopardize the continued reliability of such a significant element of our energy supply, we will inevitably jeopardize economic growth and job creation.

Knowing that, President Bush and Secretary Abraham have made a sound decision on Yucca Mountain. The nation's manufacturers stand behind them and urge the Senate to do so as well. Further delay on Yucca Mountain will only complicate our efforts to craft a comprehensive energy policy and unnecessarily threaten our economic well-being.

Don Wainwright is both chairman of the National Association of Manufacturers and chairman and CEO of Wainwright Industries Inc. near St. Louis, employing 200 men and women who specialize in custom metal components predominantly for the transportation and aerospace industries.

Why the NAM?

- The NAM is **the** advocate for pro-growth, pro-worker policies.
- The NAM ranks 10th among *Fortune* magazine's top 25 most powerful Washington lobbying groups.
- Rooted in every state and every congressional district, the NAM is 14,000 members watching the issues.
- Lawmakers listen when the NAM speaks, because the NAM **is** its members.

"[The NAM] staff have really taken the NAM to new levels of activism in trying to get so many things done."

–Rep. Tom DeLay (R-TX-22), House Majority Whip

...and why its member programs?

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Ethanol mandate sparks Democrats' opposition

BY MARLO LEWIS, JR.

Will Senator Dianne Feinstein (D-California) intercede with Sacramento politicians to protect the California marketplace for pickup trucks, minivans, and SUVs?

Feinstein is not widely known for her devotion to free-market economics and opposition to big-government mandates. Neither is Senator Hillary Rodham Clinton (D-New York). But in the ongoing clash over national energy policy, Feinstein and Clinton have staked out an anti-corporate welfare position that's to the right of President George W. Bush.

The debate in the U.S. Senate boils down to this: Should government mandates or consumer choices determine the profitability and market share of ethanol (corn liquor) in the nation's fuel supply? More simply put, should government pick the pockets of millions of motorists to enrich agribusiness giant Archer Daniels Midland and seven other big ethanol producers?

The Senate energy bill contains a "renewable fuels" mandate that would require states to nearly triple the amount of ethanol used in gasoline (from about 1.7 billion gallons in 2002 to 5 billion gallons in 2012). Although the mandate is popular with many Senate Democrats (including Majority Leader Tom Daschle (D-South Dakota)), Feinstein and Clinton—joined by Barbara Boxer (D-California) and Chuck Schumer (D-New York)—vehemently oppose the mandate. The foursome offers several telling objections.

- The ethanol mandate amounts to a "new gas tax" that could raise fuel costs 9.6 cents per gallon in California, 7.1 cents per gallon in New York, and 4.0 cents per gallon even in the Midwest states where 98 percent of the nation's ethanol is produced.
- The mandate is flagrant corporate welfare, transferring billions of dollars from working families to a handful of big companies.
- The mandate is environmentally dubious. Although ethanol is an "oxygenate" that, when blended with gasoline, reduces emissions of carbon monoxide, California does not need to increase its modest use of ethanol to meet federal clean air standards. More critically, ethanol contributes to smog and enhances the ability of toxins found in gasoline (such as benzene, a carcinogen) to seep into groundwater supplies. Arbitrarily tripling the amount of ethanol in motor fuel can only increase the risks associated with its use.
- The mandate rigs the market against newer, smarter ways of reformulating gasoline and producing cleaner fuels. Starting in 2013, the mandate requires refiners to increase the 5 billion gallon target to guarantee ethanol a fixed market share as the nation's overall fuel usage expands. Regardless of what consumers demand, or what superior alternatives industry invents, refiners will be required to make, and service stations will be required to sell, massive quantities of ethanol-blended gasoline.
- The mandate is "highway robbery." Because gasoline made with ethanol is exempted from 5.4 cents of the federal motor fuels tax, tripling the sale of ethanol will diminish highway trust fund revenues by $7 billion over the next nine years. States will not be able to afford new roads, bridges, and other critical infrastructure projects needed to relieve congestion and improve auto safety.

Ethanol partisans dispute the economic analysis on which Feinstein relies. According to them, California motorists will spend an additional 0.5 cents to 4 cents per gallon due to the ethanol mandate, not 9.6 cents. But this rebuttal is beside the point. A mandate is a mandate. Consumers have to pay for it, no matter how expensive it gets. It sets a market share floor for producers, but no market price ceiling for consumers. It is a "heads I win, tails you lose" proposition, in which consumers bear all the risk.

Furthermore, as California phases out methyl tertiary-butyl ether (MTBE), the state will increase its use of ethanol to comply with the oxygenate requirement of the Clean Air Act's reformulated gasoline program. Why should Californians have to purchase even one gallon more of ethanol than the Clean Air Act requires?

In the floor debate, Clinton warned her colleagues that, if enacted, the ethanol mandate will come back to bite them:

"If the average American consumer tunes in on this debate and realizes what is happening, there will be a revolt. I dare predict that voting for this bill, which will raise gas prices in 45 of our States, will be a political nightmare for people who end up voting for it. Higher gas prices at the pump, reduced Federal assistance for much-needed transportation projects, possible negative air quality, and public health impacts, to say nothing of raiding the Federal Treasury to give this giveaway to these large producers, makes it impossible to understand why any pro-consumer, pro-health, pro-environment, anti-government mandate Member of this body would vote for this provision."

Actually, it is easy to understand why so many lawmakers support the mandate. The ethanol lobby is more than happy to spend hundreds of thousands of dollars in campaign contributions to get back billions in corporate welfare subsidies. ADM's soft money donations—$250,000 to Democrats and $395,000 to Republicans, in the last election cycle alone—buy lots of "access" to policymakers in Washington, DC.

Marlo Lewis, Jr. is a senior fellow at the Competitive Enterprise Institute. This article first appeared on TechCentralStation.com.

"... in the ongoing clash over national energy policy, Feinstein and Clinton have staked out an anti-corporate welfare position that's to the right ofPresident George W. Bush."

FOR MORE INFORMATION

Boi on ethanol policy issues, search *PolicyBot* for the following documents: **#2303309** "Questions about Ethanol," a 5-page factsheet from the American Petroleum Institute; and **#2303213** "It's Time to End the Ethanol Tax Credit," a 4-page commentary from the Public Interest Institute.

California could get its own CAFE

BY MARLO LEWIS, JR.

The federal government's proposed ethanol mandate may be bad for California ... but a bill passed by both the California Assembly and Senate, but not yet signed into law by Governor Gray Davis, is worse.

AB 1058 will require the California Air Resources Board (CARB) to mandate "maximum feasible" reductions in carbon dioxide (CO_2) emissions from new cars and light trucks. The bill has the potential not just to foist ethanol upon unwilling consumers, but to price and regulate millions of Californians out of the market for new large sedans, pickups, minivans, and SUVs.

A California CAFE

Supporters boast AB 1058 will accomplish at the state level what Congress and the President have "failed" to do at the national level; namely, impose stricter Corporate Average Fuel Economy (CAFE) standards on new cars and light trucks, thus beginning to implement the Kyoto Protocol, the non-ratified UN global warming treaty.

Why is this worse than the ethanol mandate? According to the Energy Information Administration, Kyoto's restrictions on carbon-based fuels will drive up the average price of gasoline 14 to 66 cents per gallon—considerably more than the increases Senator Dianne Feinstein (D-California) fears from the ethanol mandate.

Whereas the safety risks from boosting ethanol usage are hypothetical, the risks from boosting CAFE standards are demonstrable. The simplest way to increase fuel economy—and to reduce CO_2 emissions from cars—is to make cars lighter and smaller. But decades of research confirm what common sense tells us: Big cars are safer. The more your car resembles a tank rather than a go-cart, the more protection it provides from collision forces.

The size and weight reductions induced by CAFE added 1,300 to 2,600 fatalities to the nation's highway death toll in 1993, according to a recent study by the National Research Council. Mandating stricter standards will put even more motorists at risk.

A menu of bad ideas

AB 1058 is quite open-ended about the means CARB may employ to reduce vehicular emissions of CO_2. However, a recent CARB and California Energy Commission (CEC) joint report, "Task 3: Petroleum Reduction Options," reveals the kinds of measures California regulators are thinking about:

- One option presented in the joint report is to "expand the use" of hybrid gas-electric vehicles. Sticker price per vehicle: anywhere from $9,500 to $14,700 more than a comparable gasoline-powered car.
- Another option is requiring a 50-cent increase per gallon in fuel taxes.
- Still another is a "feebate" program that would give $3,500 bonuses to motorists who purchase low-CO_2 emitting cars, paid for by $3,500 fees collected from motorists who purchase high-CO_2 emitting cars. What

CALIFORNIA continued on page 8

Nissan's Sentra CA gets a once-over from visitors to the North American International Auto Show. The Sentra CA (Clean Air) is a low-emissions vehicle slated for sale only in California. The CA is the first gasoline-fueled vehicle to be certified by California's Air Resources Board as a Super Ultra Low Emissions Vehicle. It meets zero evaporative emissions standards. Photo: Tracy Baker/Reuters

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Why we support the ethanol mandate

BY THE AMERICAN FARM BUREAU FEDERATION

The use of ethanol as an additive to gasoline has proven to be successful in reducing the amount of pollution emitted by gasoline engines. Additionally, the expanded use of a domestically produced and renewable energy source reduces America's dependence on foreign oil.

Ethanol production is important to American agriculture because it uses farm commodities, particularly corn, thus increasing demand for the commodity. Diesel fuel using soybeans and other farm product conversions are rapidly expanding the potential to increase commodity prices and reduce reliance on fossil fuels.

Ethanol has a unique opportunity to expand its market as a gasoline additive to reduce air pollution, required under the Clean Air Act. Problems with groundwater pollution caused by methyl tertiary butyl ether (MTBE), the petroleum-based additive currently used in 80 percent of fuels in areas with air quality problems, is creating calls for the elimination of MTBE. Ethanol can take on MTBE's market share. Ethanol's potential was greatly increased by the President's decision to deny California's request for a waiver from the Reformulated Gasoline requirement.

Farm Bureau policy strongly supports maintaining the link between ethanol and solutions to air pollution problems. The eventual phase-out of MTBE will allow for ethanol to greatly expand its market, particularly on the West Coast, a market currently dominated by MTBE. AFBF also supports efforts in Congress to require that motor fuels used in the U.S. contain a percentage of renewable, ag-based fuel.

ETHANOL LEGISLATION PENDING The following legislation has been introduced in the 107th Congress:

Bill Number	Sponsor	Summary	Status
H.R. 2249	Blunt, MO	To amend section 211 of the Clean Air Act to require a more uniform formula for gasoline and diesel fuel so that gasoline and diesel fuel manufactured for one region of the country may be transported to and sold in other regions of the country, and for other purposes.	Pending before the House Energy and Commerce Committee
S. 1006	Hagel, NE Johnson, SD	To provide for the energy security of the United States and promote environmental quality by enhancing the use of motor vehicle fuels from renewable sources, and for other purposes.	Pending before the Senate Energy and Natural Resources Committee
S. 892	Harkin, IA Lugar, IN	To amend the Clean Air Act to phase out the use of methyl tertiary butyl ether in fuels or fuel additives, to promote the use of renewable fuels, and for other purposes.	Pending before the Senate Environment & Public Works Committee
H.R. 1999	Nussle, IA	To amend the Clean Air Act to prohibit the use of methyl tertiary butyl ether as a fuel additive, to require Federal vehicles to use ethanol fuel, and for other purposes.	Pending before the House Energy and Commerce and Ways and Means Committees
S. 907	Carnahan, MO	To amend the Internal Revenue Code of 1986 to encourage the use of ethanol and the adoption of other forms of value-added agriculture, and for other purposes.	Pending before the Senate Finance Committee
S. 670	Daschle, SD	To amend the Clean Air Act to eliminate methyl tertiary butyl ether from the United States fuel supply and to increase production and use of ethanol, and for other purposes.	Pending before the Senate Environment & Public Works Committee
S. 312	Grassley, IA	To amend the Internal Revenue Code of 1986 to provide tax relief for farmers and fishermen, and for other purposes.	Pending before the Senate Finance Committee
H.R. 608	Ganske, IA	To amend section 211 of the Clean Air Act to prohibit the use of MTBE, to provide flexibility within the oxygenate requirement of the Environmental Protection Agency's Reformulated Gasoline Program, to promote the use of renewable ethanol, and for other purposes.	Pending before the House Energy and Commerce Committee
S. 613	Fitzgerald, IL	To amend the Internal Revenue Code of 1986 to enhance the use of the small ethanol producer credit.	Pending before the Senate Finance Committee
H.R. 1636	Thune, SD	To amend the Internal Revenue Code of 1986 to allow allocation of small ethanol producer credit to patrons of cooperatives, and for other purposes.	Pending before the House Ways and Means Committee
S. 265	Fitzgerald, IL	To prohibit the use of, and provides for remediation of water contaminated by, methyl tertiary butyl ether.	Pending before the Senate Environment & Public Works Committee
H.R. 454	Johnson, IL	To prohibit the use of, and provides for remediation of water contaminated by, methyl tertiary butyl ether.	Pending before the House Energy and Commerce Committee

Farm Bureau responds to "corn con"

BY TERRY FRANCL

In May, the *Wall Street Journal* ran an editorial alleging that producing ethanol requires more energy than is released when the fuel is burned, suggesting the entire ethanol industry is a government-subsidized boondoggle. The *Journal* cited a study published last year by David Pimentel of Cornell University.

Pimentel relied on data at least 20 years old and not representative of either current ethanol technology or the present ethanol industry. More recent studies show that on an energy-equivalent basis, only 0.13 BTUs of petroleum are used to produce 1.0 BTU of ethanol. Nitrogen fertilizer, produced from natural gas and electricity, accounts for a substantial portion of the energy input in corn production and, correspondingly, ethanol production.

Increased plant efficiencies have resulted in an ethanol yield of 2.68 gallons per bushel of corn—not the 2.50 gallons claimed by Pimentel. The ethanol industry currently produces a net positive energy ratio of 1.2—that is to say, 20 percent more energy is produced than consumed in the process. That ratio is projected to increase to more than 1.4 by 2012.

The average spot price of ethanol is around $1 per gallon, plus or minus five cents. This is the real-world market, before any subsidy, in which 45 ethanol-manufacturing companies must compete and provide a return to their investors. To say, as Pimentel and the *Journal*'s editorialists do, that it costs $1.74 to produce a gallon of ethanol strains the credibility of anyone who would make such a claim.

No one is suggesting ethanol is a miracle fuel. However, it is a practical way to address some of the energy challenges this country faces, including the need to import more than 60 percent of the crude oil utilized to make liquid fuel or gasoline.

Ethanol produces a clean-burning fuel beneficial to the environment and consumers, and its production adds value for the farmers who produce corn and other commodities. Ethanol also transforms the energy from natural gas and electricity (mostly coal and hydro-power) into a more desirable and useable form of liquid fuel.

The research cited by the *Journal* is not David Pimentel's first foray into the abuse and misuse of economic data. Pimentel is an entomologist, not a trained economist, and he has a history of utilizing out-of-date information in his policy analyses.

Terry Francl is senior economist for the American Farm Bureau Federation.

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The car of the future

(Hint: It looks a lot like today's cars and trucks.)

BY JAY LEHR, PH.D.

In "Hybrid Cars: Less Fuel but More Costs" (*Business Week*, April 15, 2002), Paul Raeburn bursts the bubble of those relying on the future of electricity to power our automobiles ... vehicles that are now, and will be long into the future, best suited for the internal combustion engine.

Conventional technology wins

Raeburn reports on research by John DeCicco, now of Environmental Defense, showing the added costs of hybrid automobiles are 1.5 to 3 times the added costs of "conventional improvements." Hybrid cars generate electric power on board, through the heat generated from braking friction, to assist the internal combustion engine when cruising at constant speeds. By conventional improvements, Raeburn foresees the use of new technologies that will make engines more efficient.

There are currently many high-mileage compact cars on U.S. roads. The Honda Civic HX, Toyota Corolla, Toyota Echo, Saturn S-Series, Chevrolet Prizm, Mitsubishi Mirage, Volkswagen Golf, and the new Beetle turbo-diesel all get 40 or more miles per gallon.

These cars collectively represent just 2 percent of the vehicles traveling U.S. roads. While they are the darlings of environmental zealots and the liberal press, they leave the average U.S. driver totally underwhelmed. As a nation, we are almost totally unwilling to trade performance, function, and safety for high mileage.

In addition to hybrid cars, the advances in technology that may save fuel are powered by fuel cells and electric batteries. The latter is a hopeless dream: The advent of a light, quickly rechargeable, non-toxic super-power storage battery will likely arrive in a dead heat with the much-sought-after perpetual motion machine.

The much-hyped fuel cell requires the isolation and distribution of hydrogen (remember the Hindenburg). It sounds great—just mix oxygen and hydrogen and you get electricity and water—but the reality yields awesome mountains to climb. Fuel cells will likely power stationary home and industrial operations long before they become light enough and cheap enough to power an automobile economically.

> **"The biggest problem with any effort to mandate improved fuel efficiency is the one swept under the rug: Fuel-efficiency mandates kill people."**

Adding more kindling to threaten the dreams of anti-industrial liberals, we must not forget that even electric cars and fuel cell delivery systems require pumping out huge quantities of gases unwelcome in the atmosphere.

A concurrent dream—using biofuels to reduce dependence on petroleum—means relying on fuels like ethanol and bio-diesel, which demand vast quantities of electric power, making them less efficient than conventional gasoline engines. No major new generating plant, nuclear or otherwise, has been built in the U.S. in 30 years, making these alternate fuels little more than a fairy tale for the U.S. economy.

Mileage vs. safety

The biggest problem with any effort to mandate improved fuel efficiency is the one swept under the rug: Fuel-efficiency mandates kill people.

The federal government has been legislating improved fuel economy since 1975, when the Energy Policy and Conservation Act set specific Corporate Average Fuel Economy (CAFE) standards for 1978, 1979, 1980, and 1985. Following that, the government allowed the Department of Transportation (DOT) to make standards more stringent in subsequent years.

Presently, the standards require automobile manufacturers to assemble fleets that meet an average level of fuel economy of 27.5 miles per gallon (mpg) for passenger cars and 20.7 mpg for light trucks.

In 1989, a Harvard-Brookings Institution (no conservative think tanks, these) report showed that reducing a car's weight by 500 pounds increases fatalities by 2,200 to 3,900 per year. In similar research, the U.S. Department of Transportation found passenger car standards have already caused an additional 2,000 deaths and 20,000 serious injuries each year. Perhaps the best study was performed by the Competitive Enterprise Institute, which concluded 2,700 to 4,700 auto-related deaths have occurred annually as a result of light-weighting our automobiles.

Ralph Nader—the man who first questioned the wonderfulness of the automobile and its internal combustion engine—was asked over 30 years ago what type of car he would prefer to drive. Nader responded, "a large, heavy car, because it is much safer." Nader now supports increased CAFE standards, because destroying capitalism has become much more important to him than human safety.

Free market the best option

Clean air and energy independence are worthy goals, but achieving them through mandated car mileage is foolish. The free market will determine who drives what vehicle and why. A recent survey of car buyers by Maritz Marketing Research indicates that fuel economy ranks 25th among considerations in the decision to buy a particular car. Such things as reliability, value, durability, comfort, handling, quietness, and styling rank well above fuel economy.

As for energy independence, any decent economist can explain the costs and benefits of importing foreign oil into our energetic economy. While OPEC struggles to keep a barrel of oil above $20, the U.S. markets have remained calm, in spite of the fact environmental zealots have succeeded in forbidding most domestic drilling.

It's about freedom

As Brock Yates, editor-at-large of *Car and Driver* magazine, wrote in an article last February in the *Wall Street Journal*, "portraying a bozo trundling aimlessly around in his gas-guzzling, three-ton SUV is a slander on the millions who use their private vehicles each day for legitimate personal needs. ... In the real world, the car and the light truck are the life blood of a nation perpetually on the move."

There is much at stake in the CAFE debate, and much of it is intangible. The intrinsic power of our nation lies in the unencumbered mobility of its people—socially, economically, and physically. The driving force that powers this mobility is our freedom to move about the country cheaply and at will.

Dr. Jay Lehr is Science Director for The Heartland Institute.

FOR MORE INFORMATION

WWW visit The Heartland Institute's online CAFE issue suite at **http://www.heartland.org/cafe.htm**. There you'll find links to the best available research and commentary on CAFE issues.

Also see "The Increasing Sustainability of Cars, Trucks, and the Internal Combustion Engine," *Heartland Policy Study* No. 95, available on the Heartland Web site at **http://www.heartland.org/studies/automobility-sum.htm**.

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kinds of vehicles emit the most CO2? The very ones most consumers want: large sedans, pickups, minivans, and SUVs.

Unintended consequences

Like the ethanol mandate, AB 1058 is environmentally challenged. Today's new cars and light trucks emit 90 to 97 percent less pollution than their 1960s predecessors, and tomorrow's vehicles will be cleaner still. Any policy that appreciably slows down auto fleet turnover—the replacement of older cars with newer models—hinders pollution control. By increasing the cost and/or reducing the utility of new cars, AB 1058 could encourage motorists to hang on to older vehicles longer—a consumer response known as the "Jalopy Effect."

Like the ethanol mandate, many of the options reviewed in the joint CARB-CEC report reduce gas tax receipts and, thus, the trust fund revenues available for infrastructure projects. For example, over the 10-year life of a fuel cell vehicle, the highway program loses $1,653 in revenues—substantially more on a per-vehicle basis than the losses arising from the ethanol mandate.

Of course, AB 1058 supporters will say we must pay any price and bear any burden to save the planet from global warming. That's easy for them to say, since half the Members of the California Legislature drive gas-guzzling pickup trucks, sedans, and SUVs—heavily subsidized at taxpayer expense. The Legislature buys cars for its members, and pays a hefty share of the cost. "For example," explains a recent *Los Angeles Daily News* article, "senators can choose to pay off their cars in two or four years, with the state paying up to $500 a month under the two-year plan and up to $350 under the four-year plan."

Political consequences

Hillary Clinton's warning about a "political nightmare" for lawmakers who end up voting against American motorists needs to be heard in Sacramento, not just Washington, DC. Governor Davis has not yet indicated whether he will sign or veto AB 1058.

Can the senior Senator from California pull the Governor and Legislature back from the brink? Don't bet your SUV on it: Feinstein in March supported a provision to increase by almost 50 percent the CAFE standards for new cars and trucks.

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Energy answer is not "blowing in the wind"

BY MICHAEL HEBERLING

One of the most highly touted forms of renewable power is wind-generated energy. Like solar power, it is inexhaustible (so long as the wind blows), does not pollute, and is "free." However, real-world observations of wind farms in action continue to add to the weight of evidence against wind as a viable energy source.

Wind power's environmental flaws

Wind power is intermittent. It is simply not available on those hot, humid dog days of summer when energy demand peaks. The same is true for those quiet (read: windless) bone-chilling days and nights of winter.

To produce the same amount of energy as a conventional gas-fired power plant, wind farms need 85 times more land area. While environmental activist groups regularly fight against a lone cell phone tower on a hill, wind tower "sprawl" casts far more sight pollution upon pristine vistas. Most folks are not amused by the blinding strobe-light sensation that takes place on wind farms at dawn and dusk, or the near-constant noise pollution, which many people find maddening.

To its credit, wind power is far more economical than solar: It is only twice as costly as electricity generated from fossil fuels.

Perhaps the most troubling aspect of wind power from an environmental perspective is its devastating effect on bird populations, particularly birds of prey.

In 1991, there were over 7,000 wind turbines in Northern California's Altamont Pass. That figure has since dropped to 5,400. Many of the earlier projects failed because they were not financially viable without substantial tax incentives and direct subsidies from taxpayers and ratepayers. Moreover, Altamont Pass is America's "raptor killing field." As many as 400 golden eagles, red-tailed hawks, burrowing owls, and kestrels are killed every year by the wind turbines at Altamont Pass.

> "As many as 400 golden eagles, red-tailed hawks, burrowing owls, and kestrels are killed every year by the wind turbines at [Northern California's] Altamont Pass."

The National Audubon Society was the first environmental activist group to take a stand against the carnage of wind turbines. In 1999, it declared war on the Enron Wind Corporation with an all-out media assault that included press releases, news conferences, and a "call your congressman" campaign. Enron's crime? It was proposing to build 53 wind turbines in an area "too close" to the endangered California condor's habitat.

Enron pulled the plug on its project after the Audubon Society pressured Congress to take away the company's sizable Wind Energy Tax Credit. Wind power (and, for that matter, nearly all forms of "renewable" energy) is not economically feasible without taxpayer assistance. President George W. Bush's energy package includes a five-year extension of tax credits for wind production.

New technology still falls short

Today, many environmental activists rationalize their support of an energy source that destroys wildlife with the following logic: Wind power technology has improved significantly over earlier models. New wind turbines are much larger than before, so fewer are needed to produce the same amount of electricity. Their rotating blades are longer but rotate more slowly than early models. Thus, they argue, the blades will be easier for birds to see and avoid.

The Department of Energy's "Wind Energy Initiative" calls for obtaining 5 percent of our nation's electricity from wind turbines by the year 2020. To meet that goal will require the planting of more than 132,000 new wind turbines—a figure three times greater than the number of existing communication towers in the U.S.

Between four and five million birds are killed every year in collisions with stationary, generally solitary, communications towers. One can conservatively estimate that three times as many wind turbines will cause three times as many bird deaths: between 12 and 15 million.

A wind turbine with long, rotating blades (regardless of whether those blades have been slowed) clearly will kill more birds than a smaller, stationary communications tower. A 295-foot tall wind turbine can be viewed as a "communications tower" with an additional bird-killing surface area of 21,113 square feet. That is an area almost half the size of a football field.

Ironically, environmental activist groups say they object to petroleum exploration and development in the Arctic National Wildlife Refuge (ANWR) because it may negatively affect wildlife. They instead propose to sell to the American public a form of energy guaranteed to destroy wildlife by the millions each year.

Michael Heberling is president of the Baker College Center for Graduate Studies in Flint, Michigan.

FOR MORE INFORMATION

WWW Past issues of *Environment & Climate News* have addressed this topic. See especially "Bird lovers cry foul over wind power" (July 2001) and "The false promise of renewable energy" (May 2001).

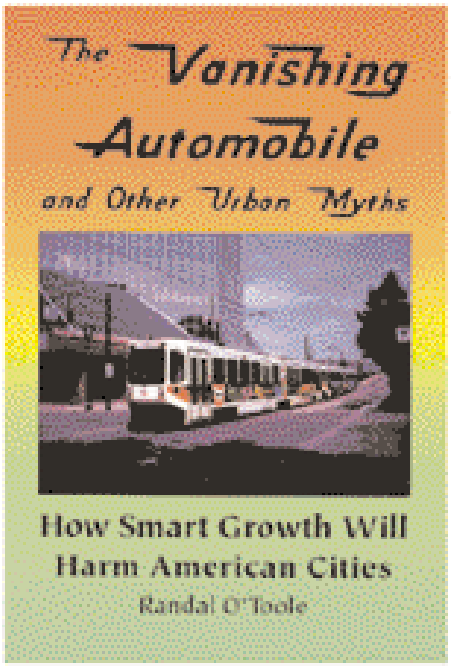
Or search *PolicyBot* for two documents by Energy Market & Policy Analysis Inc. #2322425 "Wind Farms Cannot Make a Significant Contribution to Energy Supply" (November 2000, 13pp) and #2322604 "*Science* Article Is Wrong in Claiming that Wind Energy is Cheaper than Coal" (August 2001, 7pp).

Freedom's Answer to so-called Smart Growth

Smart growth aims to destroy the American Dream of homeownership and mobility. Its advocates believe Americans should ride mass transit instead of drive cars and live in high-density apartments instead of low-density suburbs. To achieve these goals, smart-growth planners deliberately increase traffic congestion and make housing unaffordable.

The Vanishing Automobile and Other Urban Myths dispels smart-growth fantasies and presents free-market solutions to urban problems. The American Planning Association says *The Vanishing Auto* is "compelling and well documented" and "marshals a formidable array of facts" to "lambast planners' attempts to limit personal freedom."

If you live in a city, town, or suburb, then smart growth is coming to you and you need *The Vanishing Automobile*.



The Vanishing Automobile is written by Randal O'Toole, senior economist with the Thoreau Institute, adjunct scholar with the Cato Institute, and frequent contributor to *Environment & Climate News*.

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Supreme Court rules against property owners

Lake Tahoe planning agency took only a "temporal slice" of the property interest

The United States Supreme Court in April brought to a close 14 years of litigation by Lake Tahoe Basin property owners. In doing so, the Court opened the door to increased restriction of private property by governments at every level.

The Lake Tahoe property owners had sought compensation because government action had prohibited all productive use of their property for between 32 months and almost six years, depending on the definition of the government "action." The Supreme Court held the Tahoe Regional Planning Agency (TRPA) had extracted only a "temporal slice of the fee interest" by imposing a moratorium on development—a temporary "taking" that did not rise to a level justifying compensation.

Temporary nature of action the key

The decision made legal the imposition of two moratoria lasting 32 months, while the nation's first interstate zoning agency, which protects famed Lake Tahoe on the California-Nevada border, developed regional "environmental threshold carrying capacities" and worked on the development of a regional water quality plan. The decision did not address the justice of a subsequent injunction, cited by Chief Justice Rehnquist in his dissent, that extended the mandated period of non-use of the properties to six years.

Writing for the 6-3 majority on April 23, 2002, Justice John Paul Stevens turned many times to the well-known 1960 *Penn Central* decision. He held that, unlike when property is taken directly, regulatory takings involve concepts of "fairness and justice" that "are less than fully determinate."

His decision concentrated on disproving the argument that plaintiffs were "categorically" entitled to compensation because as landowners they "had been temporarily deprived of all economically viable use of their land."

Stevens noted the plaintiffs' appeal had failed to challenge a District Court finding that disallowed an argument "that the regulations constitute a taking under the ad hoc balancing approach described in Penn Central" and did not "dispute that the restrictions imposed on their properties are appropriate means of securing the purpose set forth in the Compact." Stevens concluded he was left with ruling on whether Lucas applies—that is, "whether a categorical taking occurred because [the government orders] denied the plaintiffs of 'all economically beneficial or productive use of land.'"

In his 21-page decision, Stevens emphasized that the question presented is limited to "whether a moratorium on development imposed during the process of devising a comprehensive land-use plan constitutes a per se taking of property requiring compensation under the Takings Clause."

Immediately following the decision, many news articles conveyed a misinterpretation that the Supreme Court ruling generally denied compensation for temporary takings. But Stevens wrote, "In rejecting petitioners' per se rule, we do not hold that the temporary nature of a land-use restriction precludes finding that it effects a taking; we simply recognize that it should not be given exclusive significance one way or the other."

Troubling implications

Stevens' narrow interpretation notwithstanding, the decision is quite troubling.

Referring to *Agins v. City of Tiburon* and *Danforth v. United States*, Stevens advanced the theory,

"An interest in real property is defined by metes and bounds that describe its geographic dimensions and the term of years that describes the temporal aspect of the owner's interest.... Both dimensions must be considered if the interest is to be viewed in its entirety. Hence a permanent deprivation of the owner's use of the entire area is a taking of 'the parcel as a whole,' whereas a temporary restriction that merely causes a diminution in value is not. Logically, a fee simple estate cannot be rendered valueless by a temporary prohibition of economic use, because the property will recover value as soon as the prohibition is lifted ... ('... Mere fluctuations in value during the process of governmental decisionmaking, absent extraordinary delay, are "incidents of ownership. They cannot be considered as a 'taking' in the constitutional sense."')"

In his dissent, Rehnquist wrote:

"Assume the following situation: Respondent is contemplating the creating of a National Park around Lake Tahoe to preserve its scenic beauty. Respondent decided to take a 6-year leasehold over the petitioners' property, during which any human activity on the land would be prohibited, in order to prevent any further destruction to the area while it was deciding whether to request that the area be designated a National Park.

"Surely that leasehold would require compensation. In a series of World War II-era cases in which the Government had condemned leasehold interests in order to support the war effort, the Government conceded that it was required to pay compensation for the leasehold interest. See *United States v. Petty Motor Co.* (1946); *United States v. General Motors Corp.* (1945). The Court ignores this 'practical equivalence' between respondent's deprivation and the deprivation resulting from a leasehold. In so doing, the Court allows the government to 'do by regulation what it cannot do through eminent domain—i.e., take private property without paying for it.'"

Decision encourages central planners

The Court's decision has affirmed the direction of central planning that is becoming prevalent in this country. The Court refused to impose "serious constraints on the planning process" by setting any specific takings compensation rule, such as one excluding the normal delays associated with processing permits or one that covered only delays of more than year.

The decision states, "In fact, the consensus in the planning community appears to be that moratoria, or 'interim development controls' as they are often called,

FOR MORE INFORMATION

WWW The U.S. Supreme Court's April 23, 2002 decision in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* is available on the Internet in HTML and PDF formats at **http://supct.law.cornell.edu/supct/html/00-1167.ZO.html**.

BoI The syllabus, majority opinion, and separate dissents by Justice Rehnquist and Justice Thomas are also available through *PolicyBot*. Search for documents **#2366804** (syllabus, 4pp), **#2366805** (majority opinion, 39pp), **#2366806** (Rehnquist dissent, 13pp), and **#2366807** (Thomas dissent, 2pp).

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are an essential tool of successful development."

Central planning is given high credibility in the Court's decision:

"The interest in facilitating informed decisionmaking by regulatory agencies counsels against adopting a per se rule that would impose such severe costs on their deliberations. Otherwise the financial constraints of compensating property owners during a moratorium may force officials to rush through the planning process or to abandon the practice altogether. To the extent that communities are forced to abandon using moratoria, landowners will have incentives to develop their property quickly before a comprehensive plan can be enacted, thereby fostering inefficient and ill-conceived growth."

The decision reflects an ivory tower understanding of the participatory process during regional planning:

"Indeed, the interest in protecting the decisional process is even stronger when an agency is developing a regional plan than when it is considering a permit for a single parcel. In the proceedings involving the Lake Tahoe Basin, for example, the moratoria enabled TRPA to obtain the benefit of comments and criticisms from interested parties, such as the petitioners, during its deliberations."

By mingling citations of landmark Supreme Court decisions, Stevens muted a key principle, protective of property rights, which he cited from *Nollan*.

"Moreover, with a temporary ban on development there is a lesser risk that individual landowners will be 'singled out' to bear a special burden that should be shared by the public as a whole" (citing *Nollan v. California Coastal Commission*).

The decision continues, "At least with a moratorium there is a clear 'reciprocity of advantage,' *Mahon* ... , because it protects the interests of all affected landowners against immediate construction that might be inconsistent with the provisions of the plan that is ultimately adopted. 'While each of us is burdened somewhat by such restrictions, we, in turn, benefit greatly from the restrictions that are placed on others.' *Keystone* ..."

Essentially unpredictable

For all its orientation toward central planning, the decision revolves around a theme with an outcome that is essentially unpredictable. "We conclude, therefore, that the interest in 'fairness and justice' will be best served by relying on the familiar *Penn Central* approach when deciding cases like this, rather than by attempting to craft a new categorical rule."

It is left to planners to extend their moratoria and cite the Court's adulatory remarks about the nature of central planning. Property rights advocates would do well to heed carefully the Court's narrowly defined rejection of the Lake Tahoe Basin landowners' temporary takings claim and its virtual admonition to frame future claims in terms of *Penn Central*.

Carol LaGrasse is a retired civil and environmental engineer and president of the Property Rights Foundation.

The prairie dogs that weren't there

BY WILLIAM PERRY PENDLEY

There is no evidence that Fish and Wildlife Service (FWS) employees who charged Lin Drake of Cedar City, Utah with violating the Endangered Species Act (ESA) ever heard this poem: "Yesterday upon the stair, I met a man who wasn't there. He wasn't there again today, I wish that man would go away."

Nonetheless, the poem encapsulates their case against Drake. For it was those employees who saw prairie dogs on Drake's property ... prairie dogs that were never there and that have, mysteriously, gone away.

Blame it on the camera

In January 1995, Drake bought property in nearby Enoch, Utah, intending to develop a subdivision containing affordable, single-family homes. Later that year, aware that land in the area was home to prairie dogs protected by the ESA, Drake sought to verify his belief that there were no prairie dogs on his property.

Using a Utah Division of Wildlife map, Drake learned of a prairie dog colony to the west, although the map showed no prairie dogs were there in 1992, 1993, and 1994. Just to be sure, Drake hired an engineer to determine the precise relationship between his property and the colony; it was then clear that no part of the colony was on Drake's land. Thereupon, Drake recorded a subdivision with Iron County.

On October 2, 1995, state and federal wildlife employees received an "anonymous tip" that prairie dogs were on Drake's land. Two employees visited the area and, though they did not have a map of Drake's subdivision and were admittedly unaware of its exact boundaries, which were difficult to determine because of the absence of landmarks, said they observed between 74 and 78 prairie dogs on Drake's land. Amazingly, only two were filmed, because the FWS employee had "a new camera. It was the first time I used it!"

The next day both employees physically entered upon Drake's property; they saw no prairie dogs and no prairie dog mounds or holes, active or inactive.

Nonetheless, that day they notified Drake that prairie dogs were on his land and that he could be fined $200,000 and imprisoned for a year. The next day, one of the FWS employees revisited Drake's property; again he saw no prairie dogs.

"No direct evidence" of prairie dog mortality

Over the next six months, Drake beseeched FWS employees to visit his property to learn what he knew: there were no prairie dogs there. From October 11, 1995, until March 26, 1996, FWS employees made numerous visits to Drake's property. At no time did they see prairie dogs or active prairie dog mounds or holes upon his property.

Drake's engineer did find "an old inactive prairie dog colony" on the northern corner of Drake's land, but it had long been abandoned. Unsurprisingly, prairie dogs were observed west of Drake's land, in the known colony.

There was one exception to all of these failed prairie dog sightings: The original FWS employee said that on March 17, 1996 he alone saw two prairie dogs on Drake's land; again, he was unable to film them.

Two years later, when Drake was fined $15,000 for violating the ESA by "harming" prairie dogs by disturbing their habitat, he asked for a hearing before an administrative law judge (ALJ).

Because the U.S. Supreme Court limits "harm" violations "to significant habitat modifications that actually cause death or injury, as opposed to hypothetical or speculative death or injury," Drake demanded evidence of "death or injury." None was produced; even the ALJ admitted, "there is no direct evidence of mortality or injury resulting from [Drake's] activities."

Instead, the FWS relied on its employees' testimony that the elusive prairie dogs whose presence on Drake's land was never filmed and whose habitat there was never found, had disappeared. They must be dead, killed by Drake's actions.

Remarkably, the ALJ upheld Drake's fine because these were federal employees who had no reason to lie and must, therefore, be believed.

William Perry Pendley is president and chief legal officer of the Mountain States Legal Foundation.

Illinois Supreme Court defends property rights in landmark case

BY STEVE MERICAN

In a victory for private property rights, the Illinois Supreme Court has ruled that taking one owner's private property and giving it to another for private use is an unconstitutional use of the power of eminent domain.

In *Southwestern Illinois Development Authority v. National City Environmental, L.L.C.*, 2002 Ill. Lexis 299, Docket No. 87809 (4/4/02), the present state supreme court reversed a holding of the court as it was constituted before the November 2001 election. The case represents the most important development in property rights case law in Illinois in several years.

The Southwestern Illinois Development Authority (SWIDA) is a municipal corporation whose purpose is to promote economic development in Madison and St. Clair counties. To that end, SWIDA is empowered to acquire property through the use of eminent domain.

In 1996, SWIDA issued $21.5 million in bonds and loaned the proceeds to Gateway International Motorsports Corporation. Gateway built an auto racetrack, which has had great success. Gateway soon found it needed more parking capacity for its customers.

Two parking alternatives were considered: expanding onto an adjacent site owned by National City Environmental (NCE), or building a parking garage on the track's existing property. Building the garage on racetrack property would have been the more expensive option.

Accordingly, Gateway tried to buy National City's land, which NCE used for its own business purposes. But NCE did not want to sell, at least not at the offered price. Apparently unwilling to pay the expense of building a garage on its own property, Gateway asked SWIDA to take NCE's property. SWIDA completed a quick-take application, which was approved by the county board. A circuit court made a finding of just compensation and entered an order vesting title to SWIDA. On the same day, SWIDA conveyed title to Gateway by way of a quit-claim deed.

NCE filed suit in circuit court, which ruled against it and in favor of SWIDA's action. On appeal, the court of appeals reversed the circuit court, holding SWIDA had exceeded its constitutional authority.

Not a "public use"

In its initial review of the appellate decision, the Illinois Supreme Court reversed, allowing the taking and conveyance to stand. However, on rehearing, the present court reversed, holding that "SWIDA exceeded its constitutional authority in taking NCE's land by eminent domain."

On rehearing, the supreme court defined the issue as "whether SWIDA exceeded the boundaries of constitutional principles and its authority by transferring the property to a private party for a profit when the property is not put to a public use." Because the parking facility would be used by Gateway customers in exchange for payment, it was not open to the public "by right." Thus, the court rejected the argument that this was a public use at all.

The court saw through arguments that the taking was for the economic benefit of the public, and placed greater significance on NCE's ownership rights.

"[T]his action was undertaken solely in response to Gateway's expansion goals and its failure to accomplish those goals through purchasing NCE's land at an acceptable price. It appears SWIDA's true intentions were to act as a default broker of land for Gateway's proposed parking plan."

The court ruled eminent domain could not be used to overrule the marketplace: "Using the power of the government for purely private purposes to allow Gateway to avoid the open real estate market and expand its facilities in a more cost-efficient manner, and thus maximizing corporate profits, is a misuse of the power entrusted by the public."

Steve Merican is an attorney at law practicing in Oak Brook, Illinois.

FOR MORE INFORMATION

WWW The Illinois State Supreme Court's April 2002 decision in Southwestern Illinois Development Authority v. National City Environmental, L.L.C. is available on the court's Web site at **http://www.state.il.us/court/Opinions/SupremeCourt/2002/April/Opinions/Html/87809.htm**. The 16-page decision is also available through The Heartland Institute's free online research service, PolicyBot. Point your Web browser to **www.heartland.org**, click on **PolicyBot**, and search for document **#4807601**.

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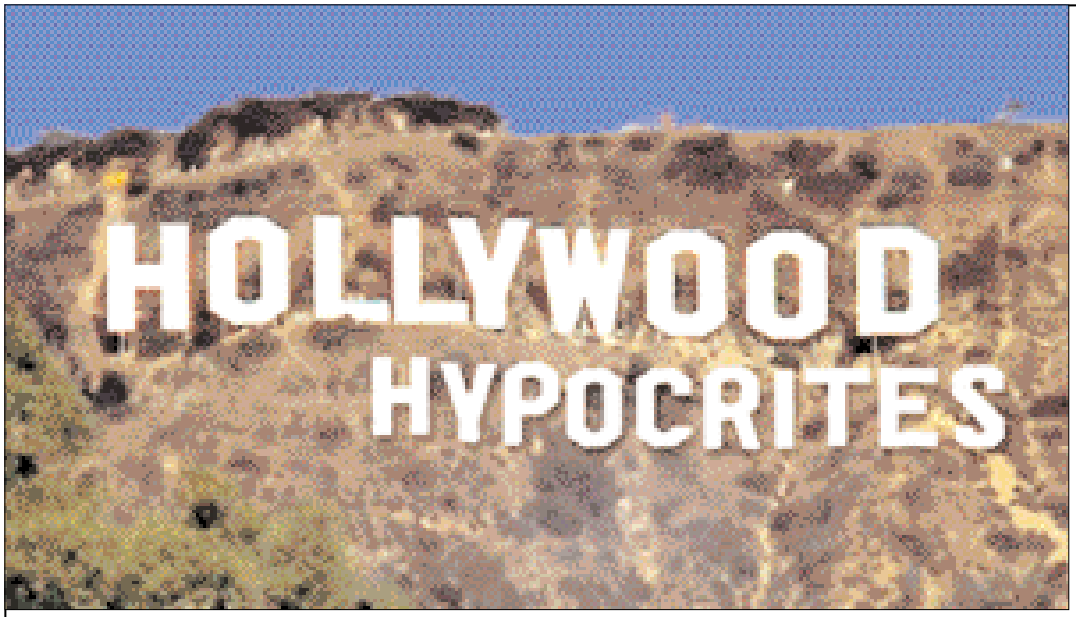

Liberals aren't known for standing up for private property ... unless it's in their own backyards. In Malibu, they don't even own it.

BY JAMES M. TAYLOR

When people think of Hollywood and politics, they are likely to envision Robert Redford, Barbra Streisand, or any of a host of politically active stars waxing poetic about the environment and volunteering their efforts to raise money for the common cause.

When Redford rails against large families driving gas-guzzling SUVs, the public generally gives him a free pass for riding around town in a yet-more-gas-guzzling limousine or flying about the country in a still-more-gas-guzzling private jet. After all, the public reasons, celebrities fight hard for good causes and their hearts are in the right place.

The days of free passes for celebrities may be over, however, in light of recent developments making news in the Golden State.

The People vs. Malibu

Billionaire mogul David Geffen, singer-actress Julie Andrews, producer-director Blake Edwards, and other Hollywood hotshots are at war with Access for All, an environmentalist group seeking to make the scenic Malibu beaches available to ordinary people.

In California and most other states, citizens have a right to stroll, fish, or simply plant an umbrella and beach towel anywhere on the shore below the high-tide line. In Malibu, a privileged retreat for the Hollywood elite, the general public has little access to the famously scenic beaches due to a lack of public access routes.

Although Hollywood stars are famously vocal about egalitarianism and environmental activism, the big stars are curiously silent about Access for All's efforts to open up the public beaches in Malibu. In fact, in a town home to the likes of Barbra Streisand, Robert Redford, Ryan O'Neal, Tom Hanks, Dustin Hoffman, and Pierce Brosnan, the stars have been downright hostile to the liberal goals of the environmental group.

Along the 27-mile stretch of spectacular Malibu coastline, only four paths connect the Pacific Coast Highway to the shore. Even these paths are of little use, as parking is difficult and dangerous along the highway.

Indian land claims teach valuable lessons

Onyota'a:ka Statement on Oneida Land Claims

Publisher's note: A major dispute occurring in the property rights arena, and one that gets little attention from the mainstream media or property rights advocacy groups, concerns claims to "rent and damages" made by Native Americans.

While deciding the legitimacy of their claims is a difficult, perhaps unresolvable, question of law, what is undeniable is that Native Americans have suffered rough treatment by politicians and the federal government ... not just a century ago but even today. In many ways, the abuse of power parallels what all landowners fear and many now face.

The Onyota'a:ka (better known as the Oneida tribe) oppose a proposed settlement to a land claim case, originally filed 21 years ago, involving a taking of land in upstate New York from the Oneidas, allegedly in violation of treaty rights. The description of the battle below comes from two pro-Oneida sources and appeared in the April 2002 issue of *Shenandoah Newsletter* (736 West Oklahoma Street, Appleton, WI 54914, subscription: $17.50/year) and is presented without editing or editorial comment.

The Onyota'a:ka (People of the Standing Stone, or Oneidas) oppose any and all agreements which extinguish their aboriginal title to their homelands, territory given to them by the Creator, the resting place of their ancestors and the birthright of those yet unborn.

The Onyota'a:ka have taken a firm stand against Raymond Halbritter, the singular, self proclaimed Chief Executive Officer, as an individual kept in a position of authority by the United States and New York to serve their interests by alienating our land, compromising our national status and violating our treaty rights.

In May of 1993 the leaders of all the Haudenosaunee (Six Nations Iroquois) nations met in council at Onondaga to review Mr. Halbritter's conduct including his signing of a secret casino compact with former New York State Governor Mario Cuomo. This compact, which was never reviewed or approved by the Oneida people, was but one indicator of Mr. Halbritter's violation of Iroquois law.

The Haudenosaunee were informed by Keller George, Halbritter's assistant, that the so-called men's council was fabricated by the self-proclaimed CEO. The Haudenosaunee determined the men's council of the Oneida nation of New York was not a legitimate agency of the Oneida people, nor was Mr. Halbritter a legitimate representative of the Oneidas

This decision, initially acknowledged by the U.S., was overturned by the Clinton Administration at the express request of U.S. Rep. Sherwood Boehlert (R-NY) resulting in Mr. Halbritter being sustained in power. Boehlert's action, which was affirmed by the Bureau of Indian Affairs, represented a clear intrusion by the U.S. into our internal affairs in breech of the 1794 Treaty of Canandaigua.

The Onyota'a:ka have endured nine years of turmoil because they have pledged to uphold Haudenosaunee law. Because of this, they have been harassed, fired from their jobs, denied due benefits, arrested and assaulted at the hands of Halbritter's non-native police force, which has attempted to enforce, upon Halbritter's direction, New York State laws on sovereign Native territory. We are now faced with eviction from our homes.

Repeated appeals have been made to the U.S. Government including the BIA to remove its recognition of Halbritter; recognition is the only means by which he is able to remain in the position. The Oneidas have a strong democratic heritage which is best guaranteed through the revival of our traditional form of government, one which will protect, rather than extinguish, our relationship with the earth.

The public statement on the Land Claim Agreement made on February 16 clearly shows complete disrespect to Oneidas everywhere. It was the dream of May Winder Cornelius, who along with her sister Delia Waterman began the land claim process, to create opportunities whereby Oneidas may come home and live as one people. We honor the noble struggles of these two brave women by calling upon our relatives in Wisconsin, New York and Canada to return home to live in peace with each other on our aboriginal homelands.

Our ancestral homeland is more than a bargaining tool for additional casinos or cash settlements to which our people are opposed, have never been consulted upon and will not approve.

Mother Earth, the sustainer of all life, is not for sale.

Oneidas for Democracy
February 26, 2002

FOR MORE INFORMATION

WWW Oneidas for democracy, PO Box 555 Oneida, NY 13421 USA; 315/363-2304 **www.oneidasfordemocracy.org**

Update on Oneida Land Fight

A U.S. Federal judge has granted New York State a stay in its payment of a $247.9 million Cayuga land claim award pending appeals.

New York State now has 60 days to decide whether it will file a notice of appeal. A Notice of appeal means being able to prepare to start an appeal.

In October, the judge added $211 million in interest to a federal judge's previous $36.9 million damages award for the land's current worth and the loss of two centuries of fair market rental value.

The parties can now proceed with their appeals in the 21-year-old land claim challenges.

U.S.A. District Judge Neal McCurn has upheld the validity of the Cayugas' claim to 64,027 acres of land in Cayuga and Seneca counties in the State of New York. McCurn determined that the State of New York acquired the land illegally by entering into invalid treaties with the Cayugas without receiving congressional ratification, required by a 1790 law.

From: Indigenous Mama, *March 13, 2002*

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Hollywood big shots have erected intimidating "private property" and "no trespassing" signs of misleading legal merit along the beaches to deter any common citizens who find their way to the shore. Others have erected chain-link fences, often constructed on public property below the high-tide line, to physically obstruct those who disregard the misleading signs.

To rectify the situation, the California Coastal Commission is proposing 10 new public rights-of-way to the Malibu beaches. The Commission itself cannot hold property, but it usually has no trouble encouraging environmentalist groups and local governments to manage public property and public access routes. Santa Cruz, San Mateo, Santa Barbara, and Orange counties have already eagerly assumed responsibility for public beach access. The towns of Laguna Beach and Newport Beach have also stepped up on behalf of common citizens. In famously liberal Malibu, however, the town is doing everything possible to keep the common citizen out.

"In Malibu, a privileged retreat for the Hollywood elite, the general public has little access to the famously scenic beaches due to a lack of public access routes."

Democratic leader calls Malibu's bluff

That's where Access for All has stepped in. Steve Hoye, a former president of the Malibu Democratic Club, decided it was time he and his famous Malibu neighbors practice what they preach.

Hoye formed Access for All to help the public assert its right to share the spectacular beaches that lawfully belong to the public. The group volunteered to hold and manage the Coastal Commission's proposed new rights-of-way. Hoye has quickly become the most shunned man in a town in which he was previously quite popular. Indeed, of Malibu's 13,000 citizens, only two volunteered to join Access for All. Most others in town curse him for disrupting their ultra-elite retreat.

David Geffen, billionaire Hollywood mogul and buddy of famous liberal activist Steven Spielberg, has taken the lead in trying to ruin Access for All. Geffen has threatened to pour his vast monetary resources into legal action against the group, though on what grounds is anybody's guess.

Sounding like a B actor in "Conspiracy Theory," Malibu Mayor Jeff Jennings accused Access for All of seeking to open access near Geffen's property simply as a means to persecute Geffen on account of his fame and celebrity. "People who have high profiles are very vulnerable," said Jennings.

"Nobody's targeting Mr. Geffen because of his popularity and fame," replied Hoye. If Hollywood popularity and fame were a free pass for celebrities to keep the public from accessing nearby beaches, where could public access ever be protected in Malibu?

Seeking to put their Hollywood dollars to work for them, singer-actress Julie Andrews and her producer-director husband Blake Edwards developed a novel way to buy off the state. After the couple learned a public access path might be built near their house, they paid the state $338,000 in 1991 to finance a staircase and public access path near the cliff-top home of Frank Mancuso, former head of MGM Pictures. The staircase and access path have never been built, though the state has kept the money.

Mancuso, in turn, borrowed a page from Andrews' book and offered to give the state money for a busing program to transport citizens to beaches away from his own.

In another case of money-trumps-principle, Nancy Daly Riordan (wife of Los Angeles Mayor Richard Riordan), billionaire financier Eli Broad, and Hollywood producer Haim Saban paid the state $1 million to open a not-quite-so-scenic public beach in nearby La Costa Beach, rather than construct a public access path near their Malibu beachfront mansions.

" ... of Malibu's 13,000 citizens, only two volunteered to join Access for All. Most others in town curse him for disrupting their ultra-elite retreat."

"It's exclusivity, is what it is," explained Linda Locklin, director of the Coastal Commission's beach access program. "They're not used to the public, they've gotten very happy with that situation."

Hoye questioned the propriety of Hollywood stars—who campaign mightily against other people buying, developing, and claiming exclusive access to scenic property—failing to allow public access to the most scenic beaches in the world, even though the public owns the land.

"These people can afford to have a $5 million home for a second home, and they're never there, and yet they still want it locked up," said Hoye. "It ain't your backyard, buddy. It belongs to the people."

Photo: Ronald Asadorian/Splash

Sting and wife Trudie Styler pose at Carnegie Hall, where they hosted a fundraising event some have called "the biggest environmental farce in the world."

Questions raised about Sting fundraiser

"... of the $1.6 million in box office revenues collected for "the biggest environmental fundraising event in the world," only $57,000 ever made it into the coffers of the Rainforest Foundation."

BY JAMES M. TAYLOR

As the Battle of Malibu was being waged on the West Coast, some of the biggest stars of the entertainment industry headed East and played out another episode of environmental activist scandal.

Rock star Sting and his wife, Trudie Styler, hosted what was billed as "the biggest environmental fundraising event in the world" on April 13 in world-famous Carnegie Hall. Joining Sting in heavily anticipated musical performances were Elton John, James Taylor (unrelated to your Managing Editor), Wynonna Judd, and Smokey Robinson.

Elton John and Sting shared both good times and a single dressing room backstage. Booze was freely served in multiple dressing rooms while the entertainers waited to perform. Chelsea Clinton rubbed elbows with Ron Perelman. Trudie Styler, reveling in the money and acclaim she and Sting were harvesting, was seen downing multiple glasses of champagne and hanging out with Ms. Clinton.

As is so often the case with celebrity fundraisers, Sting and his buddies "donated" to the cause their inestimable musical talents, while the general public was asked to donate with their less-than-Sting-sized pocketbooks.

Rainforest fraud

The beneficiary of the Sting fundraiser was the Rainforest Foundation, on whose board of directors the rock star and his wife serve. Watchdog groups have raised some disturbing red flags regarding the Foundation's distributions and creative accounting.

Charity watchdog groups recommend charities spend at least 60 percent of their revenues directly on their asserted causes—a seemingly reasonable standard many charities surpass with ease. (The Heartland Institute, publisher of *Environment & Climate News*, devoted 92 percent of revenues to its mission in 2000.) Nevertheless, the Rainforest Foundation's financial filing with the New York State Attorney General reports the foundation gave a paltry 22 percent of its revenues to environmental causes in 1999, the most recent year for which it has filed.

Still more startling, of the $1.6 million in box office revenues collected for "the biggest environmental fundraising event in the world," only $57,000 ever made it into the coffers of the Rainforest Foundation. And then, of course, 22 percent of $57,000 is less than $13,000.

When watchdog groups attempted to contact Sting for comment on what some are now calling "the biggest environmental farce in the world," Sting's representatives directed all calls to the Rainforest Foundation, which predictably said it was not yet prepared to interpret the numbers for the public.

The fact that virtually all of the paying-public's money was being diverted away from the environment seemed of little bother to the famous, and famously activist, celebrities in attendance.

With watchdog groups finally beginning to examine the questionable practices of activist fundraisers, it may only be a matter of time before the public turns a deaf ear to the self-enriching pleas of celebrity activists.

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PESTICIDES continued from page 1

schools to notify parents about what pesticides are being sprayed in public schools and when such spraying occurs. The amendment—removed from the final bill by a single vote during House-Senate conference committee negotiations—also would have banned the use of pesticides where children congregate.

A similar measure, tacked onto the Senate version of this year's farm bill, was also defeated in negotiations with the House.

Across the country, 31 states have adopted pesticide laws with provisions mirroring one or more of the provisions of the Senate bills. Four states—Maryland, Masaschusetts, Michigan, and Pennsylvania—have adopted legislation mirroring *all* of the Senate bills' provisions.

Local bans foreshadowed Senate action

In 1996, the San Francisco Board of Supervisors voted unanimously to ban the use of most pesticides deemed "toxic." The term toxic, however, is relative, as most everything is toxic in one form, or in one degree, or another. (See "An antidote to chemophobia" on page 17 of this issue.)

In 1998, the Maryland legislature passed the School Pesticide Notification Act. Like the Senate legislation, the Maryland measure was described by anti-chemical groups as a mere "notification" law. However, real-world application of the statute has deterred anti-pest treatments though red tape and attrition.

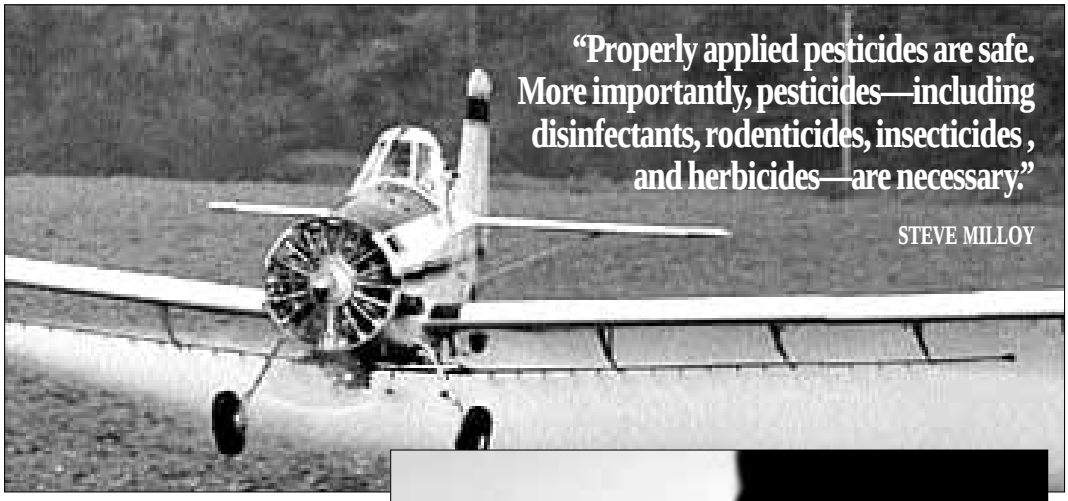
> "According to Maryland school workers, the [parent notification] statute has turned a 15-minute public health procedure into a week-long process, complete with a mountain of paperwork and immense expenditures in man-hours and related expenses."

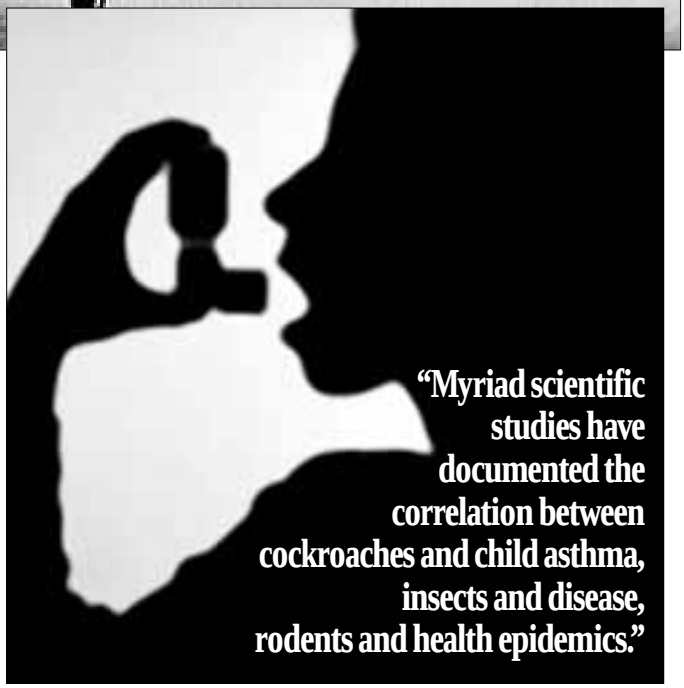
"It is not as though we were sending airplanes to fog the area around a school each time we treat for cockroaches," observed Dan LaHart, environmental issues manager for the Anne Arundel County, Maryland, public schools. "Instead, we take a hypodermic needle with a gel bait and inject it right into the cracks and crevices when a roach problem exists."

Nevertheless, the Maryland act has taken a quick, precise pest treatment program and transformed it into a bureaucratic leviathan. According to Maryland school workers, the statute has turned a 15-minute public health procedure into a week-long process, complete with a mountain of paperwork and immense expenditures in man-hours and related expenses. "Notifying parents costs schools $32,000 a year," noted Steve Milloy, a biostatistician and adjunct scholar at the Cato Institute.

Liberal activists in California attempted to pass a similar statute, but Democratic Governor Gray Davis—more often a leading proponent of environmental activist issues—recognized the threat to public health and vetoed the bill.

Failing to learn from the mistakes made in San Francisco and Maryland, the city of Lawrence, Kansas decided this spring to stop using pesticides on 12 acres of public parks. "These are pretty small parks, but it's a start," said Terry Shistar, an environmental activist and board member of Beyond Pesticides/NCAMP.


"Properly applied pesticides are safe. More importantly, pesticides—including disinfectants, rodenticides, insecticides , and herbicides—are necessary."
STEVE MILLOY


"Myriad scientific studies have documented the correlation between cockroaches and child asthma, insects and disease, rodents and health epidemics."

Pesticides critical in fighting disease

"Properly applied pesticides are safe," countered Milloy. "More importantly, pesticides—including disinfectants, rodenticides, insecticides, and herbicides—are necessary. Our children's health often depends on pesticide application. Children face serious health threats in schools from cockroaches, fire ants, bees, wasps, mosquitoes, poison oak and ivy, rats, and mice."

Myriad scientific studies have documented the correlation between cockroaches and child asthma, insects and disease, rodents and health epidemics. According to researchers at Johns Hopkins University, for example, cockroach allergens (typically consisting of cockroach feces and decaying cockroach body parts) are highly associated with childhood and adult disease. Such allergens can be present in levels high enough to cause disease, even after extermination and rigorous cleaning, if they are allowed to establish themselves in the first place. But in areas treated with pesticides, cockroach allergen levels drop by 77 to 91 percent.

"Appropriate use of pesticides has helped us achieve the highest standard of living ever," summarized Milloy. "From increasing agricultural crop yields to preventing or halting the spread of insect-borne disease, we depend greatly on these invaluable tools."

Senate bill just the first step

Statements issued by Beyond Pesticides and other environmental activist groups make it clear that efforts to limit pesticide use in schools and public parks are merely the first step toward a more comprehensive pesticide ban. Also apparent are the questionable motives behind their anti-pesticide campaign.

Allegedly to facilitate a healthy bird population, the Audubon Society is seeking to ban lawn chemicals used to control the insects and pests that live around children's homes. In a recent editorial in Long Island's *Newsday*, Audubon members claimed pesticide poisoning was "the single leading cause of death among birds" in New York.

That claim is typical of accusations made by liberal environmental activist groups: questionable in their underlying motive, reported without verification or critique by the mainstream media, and having no scientific foundation.

In May 2001, researchers at a New York State laboratory evaluated 3,216 bird carcasses and issued a report describing the results of their work. West Nile virus—a "natural" disease that can be all but eradicated by applying pesticides to limit mosquito populations—was found to be responsible for 1,263 bird deaths. Lawn-care pesticides were identified as the culprits in just 27 bird deaths.

Lessons from DDT

Similar lessons can be drawn from the environmentalists' successful efforts to ban DDT.

"DDT is a persistent, bioaccumulative, hormone-disrupting chemical," alleges the World Wildlife Fund's director of anti-DDT activities. "It is associated in the public's mind with weakened eggshells and declining bird populations."

Although the public relations campaigns of such groups as WWF have to a large extent succeeded in frightening the public, sound science has widely discredited their claims. Indeed, an EPA administrative law judge held as much shortly before the agency nevertheless gave in to special-interest pressure and banned DDT in the early 1970s.

"DDT is not a carcinogenic hazard to man," concluded the judge after seven months of hearings and 9,000 pages of testimony. "DDT is not a mutagenic or teratogenic hazard to man. ... The use of DDT under the regulations involved here [does] not have a deleterious effect on freshwater fish, estuarine organisms, wild birds, or other wildlife."

The EPA judge's conclusions followed directly on the heels of a report by the National Academy of Sciences, which concluded: "To only a few chemicals does man owe as great a debt as to DDT. ... [I]n a little more than two decades, DDT has prevented 500 million deaths due to malaria that otherwise would have been inevitable."

Although DDT effectively eliminated malaria in the U.S. and other developed countries before falling victim to environmental activist groups, the children of Third World countries have not been so lucky. Restrictions on the application of DDT in sub-Saharan Africa, for example, mean 1 in every 20 children die from malaria there, according to Milloy.

And now these same anti-chemical environmentalists, dismayed they were "too late" in banning DDT in the U.S., are targeting the remaining pesticides that fight disease and keep our children safe in schools and public parks.

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Cost of asbestos junk science continues to mount

BY JAMES M. TAYLOR

The collapse of the World Trade Center twin towers brought the issue of asbestos back into the spotlight, both for the harm it may have prevented and the harm it may have caused.

With the May 30 completion of clean-up efforts at the twin towers, it is appropriate to examine the wide range of asbestos issues that have affected U.S. citizens to date, and will continue to affect us in the future.

The most effective fireproofing

In the 1940s, the late Herbert Levine invented spray fireproofing with wet asbestos. A remarkably strong flame retardant, asbestos was used to insulate steel building materials, and particularly floor supports, from melting in the event of a fire. Asbestos treatment made steel construction safer and more affordable for everything from school buildings to large office towers.

Asbestos was widely acclaimed for its fire safety qualities until the 1970s, when asbestos workers began reporting illness after long exposure to asbestos fibers. Lung cancer was the most serious condition allegedly associated with asbestos exposure.

As concerns mounted, the material was used less and less frequently, culminating in the Asbestos Hazard Emergency Response Act of 1986. Under the Act, the Environmental Protection Agency (EPA) has supervised the mandatory inspection and removal of asbestos from hundreds of thousands of U.S. buildings.

"Asbestos treatment made steel construction safer and more affordable for everything from school buildings to large office towers."

Jumping ahead of science

As is often the case with environmental scares, the asbestos "cure" was pushed well ahead of a complete diagnosis. Research has confirmed that asbestos workers who do not use protective breathing apparatus suffer increased health risks. For the remaining 99+ percent of the U.S. population, however, asbestos health risks are virtually nil.

Asbestos products that do not emit airborne dust particles pose no risk to human health. Persons who do not work directly with asbestos installation breathe in a very limited amount of asbestos, even when they spend significant amounts of time in buildings with asbestos insulation. Moreover, 90 percent of airborne asbestos fibers take on a curly chrysotile form that is easily intercepted by the body's defense mechanisms before penetrating the lungs.

Rhodes College professors Ben Bolch and Harold Lyons, in their book *Apocalypse Not*, note the risk to schoolchildren from airborne asbestos is perhaps one-thousandth the risk entailed in receiving a whooping cough vaccination.

Even among asbestos installers, the health risk is directly correlated with the unrelated act of smoking. A 1990 study in *Science* magazine surveyed 17,800 installation workers with mixed fiber exposure. Of this total, 471 (2.65 percent) were found to have developed lung tumors. Of these 471, 467 (99.17 percent) were smokers, and only four were nonsmokers. Keeping in mind that many smokers and some nonsmokers develop lung tumors regardless of asbestos exposure, the study presents a remarkable picture of exaggerated claims for asbestos risk, even among those few persons most at risk.

Designed to prevent the tragedy

New York City in 1971 banned the use of asbestos in fire insulation. According to Steve Milloy, Cato Institute adjunct scholar and author of the book *Junk Science Judo*, One World Trade Center was insulated with asbestos, but the 1971 ban meant only the bottom 64 floors of Two World Trade Center were insulated with asbestos. The floors above were treated with a less-effective substitute. After asbestos inventor Levine learned of this, he was frequently heard saying, "if a fire breaks out above the 64th floor, that building will fall down."

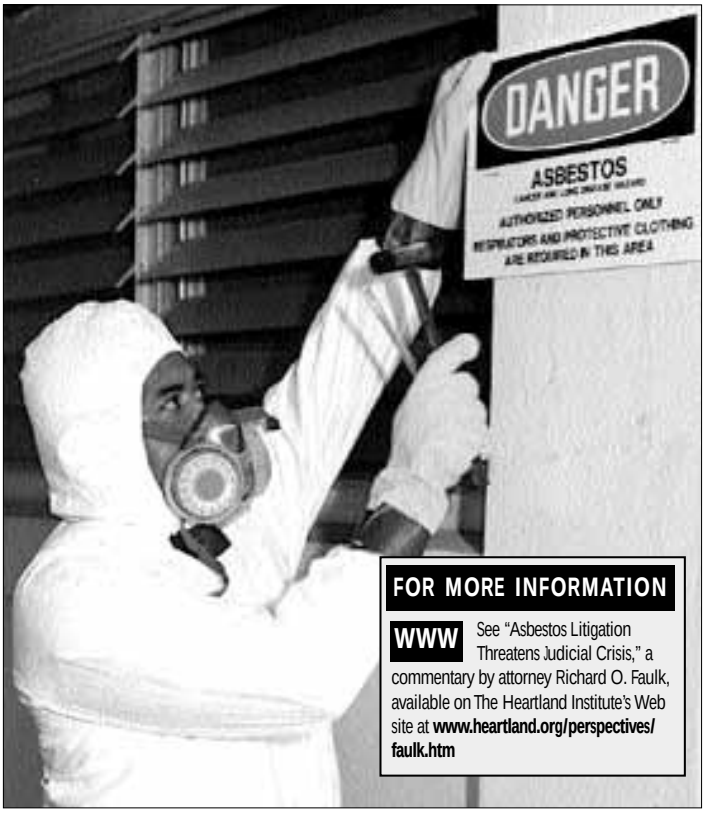
The steel girders of One World Trade Center lasted one hour and forty minutes before collapsing. Two World Trade Center lasted just 56 minutes, roughly half the time of its twin. We can only speculate how many more people would have survived if given another 44 minutes to escape Two World Trade Center. But there is no doubt that building collapse due to catastrophic fire was exactly the calamity asbestos was intended to prevent or delay.

The price is still being paid

The price of the asbestos ban is not merely in the dangers associated with using less-effective substitutes. A flood of asbestos lawsuits is swamping the courts and bankrupting scores of U.S. companies.

According to Roger Parloff of *Fortune* magazine, more than 200,000 asbestos tort claims are pending nationwide against more than 1,000 corporations. Most of the plaintiffs show no evidence of having been harmed by asbestos exposure, and many of the companies never even made asbestos products. Nevertheless, the plaintiffs are being awarded huge sums of money based on highly speculative future harm, suspect science, and juries' preconceived notions regarding asbestos.

"Total corporate asbestos liability to U.S. plaintiffs is now expected to reach $200 billion," notes Parloff.



FOR MORE INFORMATION

WWW See "Asbestos Litigation Threatens Judicial Crisis," a commentary by attorney Richard O. Faulk, available on The Heartland Institute's Web site at **www.heartland.org/perspectives/faulk.htm**

The success of so many marginal plaintiffs is encouraging other marginal plaintiffs to file suspect suits. "At least 43 companies have been driven into bankruptcy," observes Houston attorney Richard Faulk in the January 2002 *Quarterly Journal of Public Policy in Texas*. Some of the companies were among America's most recognizable—including Owens Corning, Celotex, and W.R. Grace.

The unfortunate effect of so many questionable tort awards extends far beyond the bankruptcy of many of America's landmark companies. Increasingly, firms only tangentially related to asbestos manufacturing are being sued, as so few asbestos makers remain to be sued. Even if asbestos were a significant public health threat, which science clearly refutes, the punishment is being imposed on companies two and three steps removed from culpability.

"... *Science* magazine surveyed 17,800 installation workers with mixed fiber exposure. Of this total, 471 (2.65 percent) were found to have developed lung tumors. Of these 471, 467 (99.17 percent) were smokers ..."

Furthermore, and perhaps more significantly, the piling-on by plaintiffs with only minimal exposure to asbestos and no apparent health effects has left precious little money for the compensation of asbestos workers who experienced measurable harm.

Legal changes required

"The system is bad for almost everyone involved," maintains Faulk, "particularly the sick claimants. Absent some changes in the way asbestos claims are resolved, claimants who become truly sick in the future may not receive adequate compensation. Changing the current asbestos compensation system would be pro-claimant."

Faulk recommends creating a separate docket for persons who have yet to experience any asbestos-related health impairments. Rather than exhausting the system by giving millions of dollars to plaintiffs who will likely never be harmed by their minimal exposure, plaintiffs who can show current health impairments should be first in line in their attempt to show asbestos was the culprit.

Faulk also recommends an end to punitive damages against prior manufacturers of asbestos. "Punitive damages serve to punish a defendant for wrongdoing and to deter others that might engage in similar conduct," he explains. In asbestos litigation, however, punitive damages serve neither purpose. Fire protection was hardly a pernicious motive, and even if it were, nobody will be manufacturing asbestos anytime in the foreseeable future.

Finally, companies only marginally connected with the manufacture and installation of asbestos should not be liable for alleged asbestos harm. Faulk points out that in Texas, a defendant generally cannot be held jointly liable for tort damages unless the defendant is more than 50 percent at fault. But the state carves out an exception for environmental and toxic tort cases, in which defendants can be held liable for full damages even if they are only 15 percent to blame.

Conclusion

Many lessons can and must be learned from the saga of asbestos. While the collapse of the twin towers brought asbestos temporarily into the spotlight, sound science and judicial economy demand we not forget the full range of lessons to be learned.

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PRECAUTIONARY continued from page 1

prominent liberal theorist Cass Sunstein.

Reminiscent of Bjorn Lomborg's groundbreaking book, *The Skeptical Environmentalist*, Sunstein's dismissal of the Precautionary Principle is a dagger in the heart of speculative claims made by left-wing environmental activist groups.

Sunstein's liberal leanings, as well as his academic credentials, are strongly established. He is the Karl. N. Llewellyn Distinguished Service Professor of Jurisprudence in the Law School and Department of Political Science at the University of Chicago. He has taught law at Harvard and Columbia.

And, importantly, he has written such articles as "Originalism for Liberals," "Why We Should Celebrate Paying Taxes," "The Courts' Perilous Right Turn," and "Environmentalism and Economics."

> **"[O]ur resources are limited and if we spend large amounts of resources on highly speculative harms, we will not be allocating those resources wisely."**
>
> CASS SUNSTEIN

Defining terms

Sunstein begins the paper by clearing up some ambiguities about what the Precautionary Principle means.

In its most benign form, some interpret the principle simply to mean "that a lack of decisive evidence of harm should not be a ground for refusing to regulate." This interpretation basically means that if the evidence is mixed we may still find it desirable to regulate.

Such an interpretation reflects common sense. However, environmental activists go much further in defining what the Precautionary Principle

> **"'The [precautionary] principle is literally paralyzing,' explains Sunstein, 'forbidding inaction, stringent regulation, and everything in between.' Such paralysis occurs because all societal decisions, including the decision not to act at all, entail risks of harm."**

requires. According to the widely publicized Wingspread Declaration, from a meeting of environmental activist groups in 1998, "When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not established scientifically."

A quick glance may call to mind the old saying, "better safe than sorry." But a closer examination of both the declaration's language and its real-world application shows a categorically more intrusive intent.

Decision-making paralysis

The Wingspread Declaration of the Precautionary Principle, reasons Sunstein, is undesirable because "the threshold is minimal, and once it is met, there is something like a presumption in favor of stringent regulatory controls."

"The principle is literally paralyzing," explains Sunstein, "forbidding inaction, stringent regulation, and everything in between." Such paralysis occurs because all societal decisions, including the decision not to act at all, entail risks of harm. Sunstein offers several illustrations:

• The justification for a reduced arsenic level in public drinking water is that by reducing arsenic from 50 parts per billion (ppb) to 10 ppb, over 100 lives per year might be saved. At first blush, the Precautionary Principle would seem to call for the stricter standard, as this would effectuate the principle's bias toward preserving human health.

However, like virtually all decisions, there is a countervailing risk to the stricter standard. As water costs climb due to the added purification steps, rural and poorer citizens will increase the use of free well water. Ironically, by using more well water, these residents will be exposed to higher arsenic levels than if the 50 ppb standard were never abridged.

Either decision, therefore, runs afoul of the Precautionary Principle, resulting in a paralysis of decision.

• Many environmental activists cite the Precautionary Principle to justify a ban on genetic food enhancements. Even though no adverse effects of genetically enhanced foods have been discovered, such side effects may someday be found.

The Precautionary Principle cuts both ways here, too. Genetically enhanced crops are more productive than the crops they replace, resulting in cheaper and more available food. Not allowing biotechnology to advance could cause more malnutrition, malnutrition-related health complications, and even Third-World starvation.

The Precautionary Principle can be invoked to prevent the low-but-theoretically-possible emergence of adverse human health effects ... or to prevent over-regulation of promising new ways to relieve human suffering caused by malnutrition. Once again, the result is a paralysis of decision.

• Global warming *may* occur, resulting in a broad range of potential harms. Here, many environmental activists call for a drastic reduction in the emission of greenhouse gases, pursuant to the Precautionary Principle.

However, reducing greenhouse gas emissions would entail stunning economic costs, diverting money from many health programs and putting at risk the lives of countless world citizens.

Once again, the Precautionary Principle gives little guidance for policy decision-making.

• The use of nuclear power carries with it a small but theoretically possible risk of a plant meltdown and resulting tragedy. According to many environmental activists, the Precautionary Principle therefore prohibits the use of nuclear power.

The cost of foregoing nuclear power, though, is greater reliance on fossil fuels, which cause their own environmental harms and pose greater safety risks to workers. The Precautionary Principle can be employed either on behalf of or against nuclear power.

Popular in spite of its flaws

According to Sunstein, there are several reasons why the Precautionary Principle has gained popularity despite its unavoidable contradictions. These include:

- Loss aversion. People are more concerned about losing what they have than missing out on what they might potentially gain. By seemingly supporting a presumption in favor of the status quo, the Precautionary Principle is marketed as a form of societal risk aversion.
- Visible versus less-visible concerns. The Precautionary Principle is generally invoked to deter high-visibility risks ... often at the price of increasing less visible, but equally probable, risks. Even if two hazards pose a similar threat to human life, the one that captures more public concern will be the one defended by proponents of the Precautionary Principle.
- Probability neglect. People often invoke the Precautionary Principle against low-risk activities, when a proper probability analysis will show the invocation actually leads to greater risks in other contexts. A lack of issue awareness and education leads to the neglect of proper probability analysis.
- System neglect. Many people see only the harm that is to be prevented, ignoring the indirect and unintended consequences either of action or inaction. The problem is commonplace in economics: In the case of free trade, for example, people may see the jobs that move to Mexico but fail to understand how specialization and lower consumer prices create much greater long-term benefits for the U.S.

Risk reduction by more rational means

Proponents of the Precautionary Principle fail to recognize that all resources—including the time, effort, and money available to reduce risk—are limited, Sunstein explains. Resources invested in deterring low-probability risks are not available to deter higher-probability risks.

The Precautionary Principle "is a crude and sometimes perverse way" of managing risk, Sunstein concludes. Policymakers "need to use more direct effective strategies to pursue the salutary goals of risk regulation." That requires a "fair accounting of the universe of dangers," says Sunstein: a careful balancing of the costs and benefits of inaction, regulation, and everything between.

Only after such an accounting has been made can risk-management resources be invested where they will achieve the most "bang for the buck" ... and that should be the ultimate goal.

"A rational system of risk regulation certainly takes precautions," concludes Sunstein. But it does not adopt the Precautionary Principle."

FOR MORE INFORMATION

Cass Sunstein's University of Chicago working paper, "Beyond the Precautionary Principle," is available through ***PolicyBot*** as document **#2313446**.

You can also search *PolicyBot* for the topic/subtopic combination Environment/Cost Benefit Analysis and Risk Assessment. More than 80 documents are available on the topic.

WWW *Environment & Climate News* has covered the Precautionary Principle often in past issues. See, for example, "Precautionary Principle at odds with science" (September 2001), "ICCS conference tackles the precautionary principle" (December 2000), and "Precautionary Foolishness" (December 2000).

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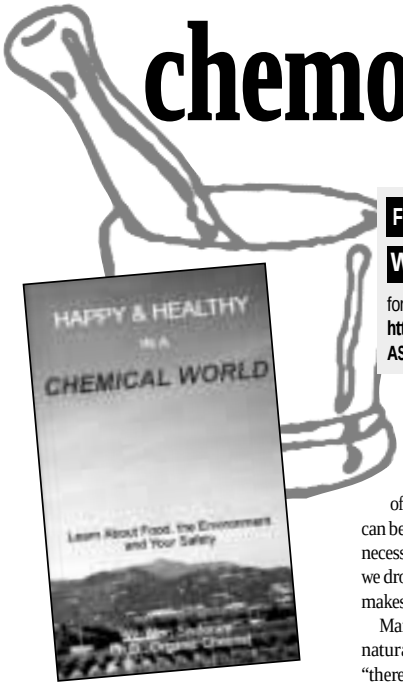
An antidote to chemophobia



FOR MORE INFORMATION

WWW *Happy & Healthy in a Chemical World* is available for $19.95 through Amazon.com, **http://www.amazon.com/exec/obidos/ASIN/0759656606/theheartlandinst**.

Understand the truth about chemicals, and you'll come away optimistic about food, nature, technology, and the future, says Dr. Alan Sweeney in his new book, *Happy & Healthy in a Chemical World* (1stBooks, 2001). The nearly 200-page book is a must-read and handy reference for persons confronted with anti-technology double-speak.

"This book is a guide to a new understanding of the sea of chemicals we live in," writes Sweeney in the introduction. The book proceeds to live up to his assessment, tackling a variety of fabricated chemical scares in a manner at once thorough, concise, and easily understood.

> **"There is no such thing as 'chemical-free' man-made products or natural entities. Moreover, man-made chemicals are identical to their 'natural' counterparts."**

No distinction between synthetic and natural

Sweeney begins by explaining that everything in the world is made of chemicals. There is no such thing as "chemical-free" man-made products or natural entities. Moreover, man-made chemicals are identical to their "natural" counterparts. An atom is an atom, and chemicals are merely compositions of those atoms, which are exactly the same regardless of who or what put them together. Natural vs. synthetic distinctions are meaningless.

Toxic scares usually unfounded

Sweeney urges consumers to be aware that toxicity is an overblown and frequently misrepresented issue. "One cannot, in a black-and-white fashion, define which compounds are toxic and which are benign. Rather, one can only describe toxic situations." For example, notes Sweeney, sugar and salt—two of the most common elements in our diets—can be toxic at high doses. Indeed, even "the most necessary compound for life, water, is toxic when we drown in it." The lesson of toxicity is "the dose makes the poison."

Man-made chemicals are no more toxic than natural chemicals, Sweeney explains. In fact, "there are many more potentially toxic natural compounds than man-made, such as those made by microbes, plants, and animals to ward off predators." The most toxic man-made chemicals are very closely controlled, whereas nature has free rein to produce as much toxicity as it desires.

Even man-made pesticides, a favorite target of environmental activist scorn, are significantly less toxic and safer than their natural counterparts. All vegetables are loaded with natural pesticides, many of which are far more potent than commonly used man-made pesticides. Efforts by organic farmers to eliminate man-made pesticides affect overall toxicity only at the margins. Sweeney quotes Bruce Ames, head of the Department of Molecular and Cell Biology at the University of California, Berkeley: "[T]he effort to eliminate synthetic pesticides ... will make fruits and vegetables more expensive, decrease consumption, and thus increase cancer rates."

Pollution into the dustbin of history

Of particularly good news for humankind, "industrial pollution is now a serious problem only in developing countries," observes Sweeney. "If current trends continue, we will see 'the end of pollution' and have better lives for all."

"Probably two-thirds of today's [pollution] problems will be gone in 30 years," Sweeney writes. One-third, he explains, will be shown to be nonexistent or inconsequential, as was the recent Alar scare. Another third will be solved, just as many past problems have been solved, with the continuing advance of technology.

A remaining third might still be with us, but will largely be purged from developed countries—not coincidentally, the very countries that have harnessed chemical engineering for the benefit of humankind.

Not only advancing technology, but also increasing wealth, make pollution an ever-receding problem in developed countries. As their incomes grow, people can afford the "luxury" goods (as compared to the necessities of food, clothing, and shelter) of technological research and costly pollution abatement technologies. A good example is the recent announcement of President George W. Bush's Clean Skies Initiative, which would have been both technologically impossible and financially unfeasible just a few short years ago.

Applying day-to-day lessons

The long and short of it, according to Sweeney, is that consumers must take the time and make the effort to become informed on environmental issues in the face of media and activist groups often pushing a self-serving agenda.

The media are frequently more interested in attention-getting headlines than reporting the underlying science. Environmental activist groups often use scare tactics to further other goals, such as anti-globalization, socialism, and anti-industrialism. Well-meaning environmentalists often fall victim to these propaganda campaigns and oppose free-market technologies based on fear and emotion.

> **"The most toxic man-made chemicals are very closely controlled, whereas nature has free rein to produce as much toxicity as it desires."**

So how can we best live day-to-day in a world of both natural and synthetic chemicals? Sweeney offers several suggestions far more beneficial to human health than buying into the "pesticide-free," "chemical-free," or other misleading campaigns:

- Eat a balanced diet.
- Follow low-fat guidelines.
- Eat at least five servings of fruit and vegetables a day.
- Don't fall for diet fads.
- Don't overdo any food or supplement.
- Avoid spoiled or tainted food.
- Limit your consumption of salted, smoked, or barbecued food.
- Take antioxidant supplements.
- Take a vitamin supplement.
- Run your water tap briefly before using it.
- Wash your hands with soap frequently.
- Wash fruit and vegetables carefully.
- Avoid smoke and dust.
- Open windows when vacuuming.

"I am, and I think most people are, willing to pay for clean air, clean water, and safe food," concludes Sweeney, "but I don't want to pay for excessive, nit-picking bureaucratic rules and regulations which produce minuscule or zero results."

If this strikes you as solid common sense, then you'll appreciate having *Happy & Healthy in a Chemical World* as your guide.

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EDITORIAL

Is EPA ready for the truth about dioxin?

BY JAMES M. TAYLOR
MANAGING EDITOR

In late May, the Environmental Protection Agency issued its annual Toxic Release Inventory (TRI) report on the amount of toxic chemicals released into the environment. This year's report contained some genuinely good news, which probably explains why it got little attention in the press. It notes, for example, that chemical releases fell nearly 10 percent from 1999 to 2000 and are down some 48 percent since 1988.

Most surprising about the report is what it did not say: It did not bash American industry for releasing dioxins, long described by environmentalists as the "deadliest chemical known to man." This was the first TRI to include dioxins, and many people in industry had feared it would be used as an opportunity to pummel businesses.

How deadly?

Dioxins are a group of chemical compounds that can be released by such human activities as trash burning, metal smelting, fuel burning, and the bleaching of paper pulp. Natural sources of dioxins, such as volcanic eruptions and forest fires, probably dwarf emissions caused by human activities.

Dioxins' reputation as deadly chemicals arose from tests on laboratory animals, where it was discovered that even tiny amounts (just six micrograms per kilogram of body weight) could kill guinea pigs. Other kinds of rodents proved to be much more resistant. (Hamsters, for example, require between 2,000 and 5,000 times the dose to achieve the same mortality rate.) Ten thousand studies later, it is now generally believed that exposure to low levels of dioxins does not present an appreciable human health risk.

The Environmental Protection Agency in 1994 attempted to label dioxins a "known human carcinogen," but its own scientific advisors rejected such a conclusion. In June 2000, EPA tried again, claiming the cancer risk from dioxins exposure is 10 times higher than the agency reported in 1994. But EPA also said the risk could be zero, and the agency's "draft assessment" still hasn't been formally released.

EPA's past dioxin-phobia

EPA's 2000 risk assessment was completely out of line with assessments conducted by government and scientific agencies in the rest of the world. EPA modeling resulted in an estimated "safe" daily intake of dioxins between 100 and 1,000 times lower than safe intake levels as determined by the U.S. Agency for Toxic Substances and Disease Registry, Canada, Japan, the European Commission Scientific Committee on Food, and the Joint United Nations Food and Agriculture Organization/World Health Organization Expert Committee on Food Additives.

EPA's proposed standard for dioxins is so extreme that practically no foods could pass the test. Scientific analysis of Ben & Jerry's "World's Best Vanilla" ice cream, for example, showed it had 200 times the level of dioxins considered by EPA to be safe. Indeed, the EPA risk assessment holds that human exposure to dioxins in the natural environment is 100 times higher than "safe" human exposure levels!

In the past, EPA fueled unreasonable public fear of dioxins by failing to report that exposure is far more likely to come from natural or non-industrial sources than from industry. For example, backyard trash burning is currently the largest identifiable source of human dioxin emissions. Emissions from industry sources fell some 80 percent between 1987 and 1995 and are expected to fall another 66 percent by 2004.

No more scare tactics?

An EPA report that doesn't cry "wolf" over chemical emissions is noteworthy indeed. Is it a sign EPA is moving away from scare tactics and extremism? We can only hope.

In both the news release and executive summary of the report, EPA cautions that "TRI reports reflect releases and other waste management activities of chemicals, not exposures of the public to those chemicals. Release estimates alone are not sufficient to determine exposure or to calculate potential adverse effects on human health and the environment."

This is an important message that belongs at the beginning of the two documents mentioned, rather than at their very ends where, in fact, it appears. Many experts believe the TRI is a nearly useless exercise because it reports on chemicals that are never released to the environment. TRI also fails to distinguish emissions that may threaten human health from those that do not, or to weigh emissions by their toxicity.

Compared to past rhetoric from EPA, however, it is a sign of progress that this commonsense message appears at all.

"... EPA cautions that 'TRI reports reflect releases and other waste management activities of chemicals, not exposures of the public to those chemicals. Release estimates alone are not sufficient to determine exposure or to calculate potential adverse effects on human health and the environment.' This is an important message that belongs at the beginning of the two documents mentioned, rather than at their very ends where, in fact, it appears."

FOR MORE INFORMATION

WWW on EPA's Toxic Release Inventory, go to **www.epa.gov/tri**.

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_____Local or Regional

_____**ACTIVISTS**
Which of the following most accurately describes your interest in environment issues:
_____Landowner
_____Environmentalist
_____Lobbyist
_____Public policy analyst

_____**MEDIA**
Are you a journalist who reports or writes about environment issues?
_____Yes _____No

Do you work for:
_____print media
_____electronic media
_____both

_____**TEACHER**

Return by Mail to: The Heartland Institute, 19 S. LaSalle, Suite 903, Chicago, IL 60603 or fax this entire form to 312/377-5000.

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NAME
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STREET
CITY/STATE/ZIP
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Please check ONLY ONE section:

_____**BUSINESS LEADERS**
Which of the following most accurately describes your position:
_____Owner or principal
_____Public relations/marketing
_____Legal/government affairs

_____**PUBLIC OFFICIALS**
Were you:
_____Elected _____Appointed

On what government level do you serve:
_____Federal
_____State
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